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PRACTICAL LEGISLATION

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THE COMPOSITION AND LANGUAGE OF ACTS OF PARLIAMENT AND BUSINESS DOCUMENTS

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POLITICAL SCIENCE

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INTRODUCTION.

The following treatise was written many years ago for the instruction of the assistant draftsmen in the office of the Parliamentary Counsel. It was published by her Majesty's Stationery Office, and being now out of print, is republished, with the consent of the Government, with an introduction and with certain alterations required by recent legislation.

Mr. Austin, no mean authority, writes in his work on Jurisprudence, "I will venture to affirm that what is commonly called the *technical* part of legislation is incomparably more difficult than what may be called the *ethical*. In other words it is far easier to conceive justly what would be useful law, than so to construct that same law that it may accomplish the design of the law giver." Mr. Gladstone expressed his opinion to me that a Bill was the very soul of legislation, and one of the most learned men perhaps in modern times, Bishop Westcott, the late Bishop of Durham, points out the essential requisite in drawing Acts of Parliament, and indeed in all other sorts of serious composition when he says, speaking of the benefits that he had derived from the tuition of Dr. Prince Lee, the famous master of King Edward's school at Birmingham: "If I were to select one endowment which I have found most precious to me in the whole work of life, I should select the absolute belief in the force of words which I gained through the strictest verbal criticism."

For myself, I learnt from the instruction of those two great scholars, Dr. Kennedy and his brother George

Kennedy, that Greek particles even can be made instinct with life and that words, though not "built up in lofty rhyme and not expressing thoughts that burn," can be made to breathe.

From Cambridge I passed to the study of conveyancing, the driest of all earthly studies, and there I found that the apparent object of legal expression was to conceal the meaning from ordinary readers, and that the forms which a law student of that period was incessantly employed in copying were wordy cairns, on to which each conveyancer of eminence had from time to time thrown a new word till the whole became a huge heap of unintelligibility.

Briefless, and therefore with much leisure, I devoted a great deal of time to the study of the contents of the statute book, and here I found a great contrast between its earlier and its later pages. The prince of all draftsmen, Stephen Langton, the Papal Legate, expressed Magna Charta in short and precise language ; for example, no one can complain of ambiguity or verbosity in the most famous of all written enactments which declares, when translated, "To no man will we sell, to no man will we deny or delay, right or justice." The draftsman also, of the twenty-second year of Henry VIII. (c. 9), left no room for doubt as to his meaning when he says, after reciting that the cook of the Bishop of Rochester had put poison into a dish of broth that he had prepared, "Our said Sovereign Lord the King of his blessed disposition inwardly abhorring all such abominable offences . . . hath ordained and enacted by authority of this present Parliament that the said poisoning be adjudged and deemed high treason and that the said Richard for the said murder and poisoning of the said two persons . . . shall stand and be attainted of high treason and because that detestable offence now newly practised and committed requireth condign punishment for the same, it is ordained and enacted . . . that the said Richard Rose shall be therefore boiled to death without having any advantage of his clergy."

On the other hand when I came to modern times I found (again to quote Mr. Austin) "statutes, made with great deliberation and by learned and judicious lawyers, have been expressed so obscurely or have been constructed so inaptly that decisions interpretating the sense of these provisions, or supplying and correcting the provisions *ex ratione legis*, have been of necessity heaped upon them by the courts of justice. Such, for example, is the case with the Statute of Frauds which was made by three of the wisest lawyers in the reign of Charles II., Sir M. Hale (if I remember right) being one of them."

Ludicrous instances of confused expression occasionally enliven the pages of the statute book. Thus among the things which might have been expressed differently, an instance is to be found in the fifty-second of Geo. III. c. 146—penalties under this Act were to be given half to the informer and half to the poor of the parish; but the only penalty imposed by the statute was transportation for fourteen years.

In a later instance the art of the draftsman cannot be commended who gave the following as a definition in the Darlington Improvement Act of 1872: "The term new building means any building pulled or burnt down to or within ten feet from the surface of the adjoining ground."

Amendments proposed to Bills have not infrequently erred in vagueness; here is an amendment proposed by a Queen's Counsel in 1865: "Every dog found trespassing on inclosed land unaccompanied by the registered owner of such dog or other person who shall on being asked give his true name and address, may be then and there destroyed by such occupier or by his orders."

During the committee stage in the House of Lords of an Agricultural Holdings Bill, the following notice was put down by a noble Lord: "To ask the Government whether they will consider the practicability of introducing into the Bill some provision for alleviating the great hardship now suffered by the family of any clergyman if

he dies while occupying his glebe as many clergymen have latterly found themselves reluctantly compelled to do."

To qualify myself for avoiding, if possible, such pitfalls as these, I studied Coode's valuable book on legal expression, and the American codes, especially those of Mr. Field, and also the code of procedure of the State of New York; and I found that the subjects of Acts of Parliament, as well as the provisions by which the law is enforced, would admit of being reduced to a certain degree of uniformity; that the proper mode of sifting the materials and of arranging the clauses can be explained; and that the form of expressing the enactments might also be made the subject of regulation. I found also that the suggestions made as to the course to be taken to ensure clearness are not solely applicable to Acts of Parliament, but with a little adaptation may be applied to every sort of composition employed in business.

Having this in my mind but not having then reduced my conclusions to a complete system, I tried my prentice hand as an amateur in 1850 in framing a Colonial Bill for Sir William Molesworth in which I endeavoured to simplify and shorten the expression of legal enactments. The Bill attracted some attention from the novelty of its mode of expression, but being opposed by the Government did not of course become law.

In the year 1854 I had at last an opportunity of putting my new system in practice. Mr. Cardwell, afterwards Lord Cardwell, at that time President of the Board of Trade, was anxious to make a great reform in the merchant shipping law. Following in some degree the example of the American codes, I divided the Bill into parts and then divided the parts under separate titles, arranging the clauses of the Bill in a logical order so that a glance at the table of contents would convey to the reader a correct idea of the effect of the Bill. The clauses were drawn on a regular principle that divided the case, the legal action, the conditions, the provisoes, and so forth according to the

plan which I afterwards fully developed and which is given in the following pages. Mr. Farrer, afterwards Lord Farrer, greatly assisted me in the preparation of the Bill, and as, being an officer of the Board of Trade, he was particularly conversant with the details of the subject, he entirely drew the most technical part of the measure—that relating to seamen and wages.

I continued to be employed in drafting Acts of Parliament during my private practice at the Bar till 1861, when I was appointed counsel to the Home Office, an office which was afterwards converted into the office of Parliamentary Counsel, and for the remainder of my official life I was occupied almost entirely in preparing legislation.

It will be seen, therefore, that whatever deficiencies may exist in the following treatise they are, at all events, not due to ignorance or want of experience.

It may be interesting to the reader to learn something of the mode in which a Government Bill is constructed. The best course will be to take the example of an important Bill such as the Irish Land Act of 1870.

The instructions given me were as usual, to a great extent, verbal ones, conveyed during a series of conferences with Mr. Gladstone. I used to attend him at his house generally by myself. I never hesitated to tell him my mind, "This will not do;" he would then stand up with his back to the fire and make me a little speech urging his view of the case; I then replied shortly till the point was settled. I recollect on one occasion his manner was so vehement that I thought I must have gone beyond bounds in contradiction and began to apologise. His reply was, "Go on as you always have done and make no apologies; if my manner has led you to think that I am offended, I am sorry for it."

One limit, however, I imposed on myself; I observed that he objected strongly to what sportsmen call hunting heel. When a question had been fully argued and decided

he, above all things, disliked to have it reopened, and I never ventured to do so unless I could bring forward some fresh evidence on the subject.

Mr. Gladstone was as economical of his time as he was of the public finances. I used to sit on one side of the table whilst he sat on the other side with a letter before him. When a difficult point occurred I would say, "Wait a moment and I will look at my papers." Whilst I was searching for the solution Mr. Gladstone would go on with his letter, and when he saw me look up he would again give his attention to the Bill. This would occur in a Bill involving the most intricate problems, as, for instance, in the Irish Land Act of 1881, and he seemed to be able to turn his mind from one subject to another without the slightest difficulty or confusion.

Mr. Gladstone's was the most constructive intellect with which I ever was brought in contact and also was the most untiring in devotion to its object. He understood and revised every word of a Bill and even settled the marginal notes. Once only had we any discussion as to the arrangement of a Bill, and this arose on the Irish Disestablishment Bill. I wished to put in one short clause at the very commencement, a sentence disestablishing the Irish Church. Mr. Gladstone disapproved and I was about to accept his instructions to postpone the provision when Lord Granville interfered, saying, "Had you not better pay attention to the draftsman's suggestions?" Whereupon Mr. Gladstone gave way and the proposed clause appeared at the beginning of the Bill.

A strange contrast to Mr. Gladstone's management of Bills was that of Mr. Disraeli. He seemed to have an intuitive perception of what would pass the House of Commons, but he cared nothing for the details of a Bill, and once satisfied with the principle of a Bill, he troubled comparatively little about its arrangement or its construction. It was in course of preparing the Reform Bill of 1867 and watching every night its passage through Parlia-

ment that I had ample means for the first and last time of judging of Mr. Disraeli's characteristics.

I was constantly struck by his great skill in overcoming difficulties as they arose in Parliament, and his tact in meeting by judicious compromises the objections of his opponents. His courtesy to me never failed even under the most trying circumstances. My first introduction to him was so curious that it may be worth telling. I think it was on Wednesday, November 13, 1867, that Mr. Walpole, then Home Secretary, gave me to read a copy of the Reform Bill which had been prepared by a parliamentary agent. I expressed to him an opinion unfavourable to the Bill as drawn. This opinion was repeated to Lord Derby who sent for me to the House of Lords on Thursday 14th. I told him in substance what I had told Mr. Walpole. Lord Derby said it was too late to take any steps to alter the Bill to the extent which I wished, and I undertook at his request to communicate with the draftsman and to tell him to proceed with his work. I returned to my office and was actually engaged in writing the letter when Mr. Disraeli's secretary now Lord Rowton came in and told me as an instruction from Mr. Disraeli to entirely redraft the Bill, and added that the Bill must be ready on Saturday, 16th. Accordingly next day I took the Bill in hand, and working with two shorthand-writers from ten till six, I completed it. The Bill was printed during the night and was laid before the Cabinet on Saturday. It was considered on Monday by Mr. Disraeli; he personally instructed me in the matter and the Bill was circulated to the House of Commons on Tuesday. This *tour de force* in draftsmanship could not have been accomplished, had I not been saturated, so to speak, with reform from my preparation of the Franchise Bill of 1866, when I prepared for the Government a complete series of memoranda and notes relating to the franchise, including a comparison between the municipal and Parliamentary franchises with a view to showing the advantage which would result from assimilating

the Parliamentary franchise to the municipal franchise. The work at the time had seemed to be useless, for, as is well known, the Franchise Bill of 1866 never became law.

The sum of the whole matter is this, that to prepare a good Bill the draftsman must receive sufficient instructions, but they will necessarily be short, and he must exercise a very large discretion in filling up the gaps. He ought to draw a memorandum and to supply notes furnishing the minister with information on all technical points.

The Bill should be clear and should state at the very commencement the important principle of the measure and the greatest pains should be taken to separate the material from the comparatively immaterial provisions.

Before commencing to draw the Bill the draftsman should ask the minister on what questions he wishes to take divisions, and these points should be placed at the beginning of the Bill in the clearest and most concise form so that it should not be possible that a division should take place on a complicated issue. Above all, referential legislation must, as far as possible, be avoided. It is not fair to a legislative assembly that they should, as a general rule, have to look beyond the four corners of the Bill in order to comprehend its meaning.

It is in my judgment an unwise plan to bring forward a Bill containing clauses which it is intended to abandon. The best way is, I consider, to make the Bill as complete as possible at first, but to be ready to make compromises on certain points which the Government do not regard as essential.

As a detail it may be well to warn the inexperienced draftsman against an intellectual danger incident to the employment of shorthand writers. The essence of business composition is to think before you write, whilst the effect of employing shorthand writers too soon is to induce the novice to write before he thinks.

It may be well to warn the draftsman that in his case virtue will, for the most part, be its own reward, and that

after all the pains that have been bestowed on the preparation of a Bill, every Lycurgus and Solon sitting on the back benches will denounce it as a crude and undigested measure, a monument of ignorance and stupidity. Moreover, when the Bill has become law, it will have to run the gauntlet of the judicial bench, whose ermined dignitaries delight in pointing out the shortcomings of the legislature in approving such an imperfect performance.

Some judges, however, and these not the least eminent, have taken a different view of the position of the draftsman. Mr. Justice Stephen said, speaking from his own experience: "I think that my late friend, Mr. Mill, made a mistake upon the subject, probably because he was not accustomed to use language with that degree of precision which is essential to every one who has ever had, as I have had on many occasions, to draft Acts of Parliament, which, although they may be easy to understand, people continually try to misunderstand, and in which, therefore, it is not enough to attain to a degree of precision which a person reading in good faith can understand; but it is necessary to attain, if possible, to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it."

Now the real facts of the case probably are that the crude and undigested measure has occupied for months the time and thoughts of some of the ablest men in England assisted by their subordinate, the draftsman, and oftentimes every possible objection to the Bill has been, as Mr. Gladstone said in respect of the Land Law Ireland Act, 1881, considered by the minister before the Bill was brought into the House of Commons.

Moreover, a Bill not involving any great constitutional change may meet most determined opposition. Take the Army Bill as an illustration. The Army Act of 1881, like the siege of Troy, took ten years before it was brought to a conclusion. Instructions were given to me by Mr. Card-

well in 1867; a Bill was prepared, but was not proceeded with; in 1872 the subject was revived and a complete scheme was prepared for consolidating the Mutiny Act and the Articles of War. This scheme was partially considered by the War Office in 1873. It was then again laid aside till 1877 when a short interval of discussion occurred, after which it was once more shelved until 1878, when a select committee was appointed by the Secretary of War to consider the Bill. This committee gave a general approval to the Bill, and in 1879 an almost identical measure was at last introduced into Parliament and passed.

Some idea of the labour involved in preparing this measure may be formed from the fact that the papers written to explain the law alone fill a folio volume of 1067 printed pages. The Act was afterwards slightly amended, and consolidated, and under the title of the Army Act is annually brought into operation by a short special Act.

A short statement may be added as to the progress that has been made during the last thirty years in consolidation and codification and in the reform of the statute book.

With respect to codification it may be stated at once that nothing has been done or perhaps can be done towards any systematic codification of English law.

With respect to consolidation and the reform of the statute law more can be said.

In 1868 Lord Cairns appointed a statute law committee of which I am the only original member still surviving. The duties of the committee are to make arrangements for, and to superintend the publication of, a revised edition of the statutes. The first step was to free the statute book from obsolete and repealed statutes. This has been done under the superintendence of the committee down to the present time. Two revised editions have been published, the second is a cheaper edition than the first, and is contained in sixteen volumes brought down to the year 1886, the last volume of which was published in 1894.

The committee also superintend the preparation of an

index of the whole statute law, digested on a system laid down in instructions of great particularity issued by the committee for the use of the compilers. This index is published periodically; the last edition was issued in 1901 and contains a complete analysis of the substance of the existing statutes.

With respect to consolidation the committee have superintended the preparation of numerous Bills, some few of which have become law, but so great an opposition has recently been shown by certain members of the House of Commons to the passing of such measures, that the attempt to carry further Bills of the kind has been abandoned for the present.

The recommendations given in these pages, though they are specially adapted to Acts of Parliament, apply with equal force to every description of business composition. Whatever the subject, the writer should first get the whole matter into his head, separating the important points and trusting to his memory to retain them. He should then group his facts according to their importance, and when he has thus arranged the outline of his composition, he may fill in the details by reference to his papers. It is very important for a man engaged in business transactions to acquire the habit of trusting to memory till he is master of the whole subject. Making numerous notes weakens the thinking power, on the exercise of which depends the whole art of clear and concise composition. Notes should be confined to references to passages which it is important particularly to notice. If a record is to be preserved for future use a memorandum should be written.

PREFACE TO THE FIRST EDITION.

Object of work.

THIS work has been written as a practical guide for persons engaged in preparing Acts of Parliament. It is based on Instructions to Draftsmen, which have for some years been in use in the office of the Parliamentary Counsel. Hence its didactic tone and its mention of various topics which would, if it were addressed to adepts and not to learners, be excluded as trivial and well known, but which are frequently neglected in practice.

Summary of contents of work.

It is divided into four parts. The first part instructs the draftsman as to the mode of getting up his subject. The second part deals with the arrangement of the subject-matter of an Act of Parliament, pointing out the expediency of presenting the law to Parliament in a clear and concise form, and insisting on the advantage of separating principle from detail, and material from comparatively immaterial provisions. The third part is occupied with the subject of the composition of sentences. The fourth part makes observations and suggestions with respect to

preambles, the commencement of Acts, the construction of Acts, and other formal matters.*

Absence of special instructions as to codification and consolidation.

As no special reference is made to Consolidation or Codification, it may be well to say in the preface a word on those subjects, and to point out the applicability to them of the rules laid down in this work.

Meaning of codification.

Codification is the reduction into a systematic form of the whole of the law relating to a given subject, that is to say, of the Common Law, the Case Law, and the Statute Law; while consolidation differs from codification in this alone, that it omits the Common Law and comprises only the Statute Law relating to a subject as illustrated or explained by judicial decisions.

Summary of processes essential to codification.

Codification or systematic consolidation must be a gradual work. 1st. The Common Law must be extracted from the authoritative text-books in which it is embedded, and so much as is not capable of being absorbed into the Statute Law must be digested into an Institute or Book of Maxims. 2nd. The Case Law must be reduced into a manageable bulk by publishing leading cases (or cases which are in reality legislative decisions given by the judges) and by setting aside in a Digest the effect of such cases as are merely illustrative of Statute Law or Common Law, and are not readily incorporated therein, or by issuing an expurgated edition of the older

* The Interpretation Act, 1889 (52 & 53 Vict. c. 63), has been printed at the end of the work, as it is the duty of every draftsman to know it by heart and to bear its definitions in mind in every bill which he draws.

Reports. 3rd. The Statute Law must first be indexed,* and then be consolidated in classified groups. When the above-mentioned processes have been completed, a code will be readily made by absorbing into the text of the classified groups of Statute Law any portion of the Common Law or Case Law left outside the Institute of Maxims.

Result of codification a series of Acts of Parliament.

It is unnecessary to enter into further details to show that the codification or consolidation of a particular branch of law is merely another mode of expressing the composition of an Act or series of Acts, embodying in the case of codification the whole of that law, and in the case of consolidation a portion only.

Rules applicable to ordinary Acts of Parliament applicable to code.

The extent of the subject matter, however, cannot affect the applicability of the rules of composition. Indeed, codification or consolidation is in many respects an easier task than the preparation of the amending Acts required for current legislation. Just as it is easier for an architect to build a house from its foundations than to convert an old inconvenient house into a modern convenient one, so a draftsman can more readily construct an Act dealing with the whole of the subject-matter, than an Act in which the new law must be adjusted and made to harmonise with the old and often conflicting provisions of former Acts.

Slight qualification of rules as to arrangement in case of code.

The only qualification to be made in the application of the rules laid down in this work to a code

* This has been done. A chronological table, with an index to the Statutes, is published periodically by the Stationery Office.

or a consolidating Act, relates to the arrangement of groups of sections, and is this, that in making the plan for the arrangement of the sections of a code or consolidating Act, Parliamentary considerations may usually be disregarded, and logical considerations, as they are called, be exclusively adhered to. This difference, however, is very slight, as in the great majority of cases the most scientific and logical arrangement is the one which is best for Parliamentary purposes.

Arrangement of code not treated of.

It must be admitted that no rules are found in this treatise for the arrangement amongst themselves of *groups* of statutes, whether such statutes are codes or merely consolidating Acts ; in other words, no general outline of a code embracing the whole or a great part of the English law is laid down, or attempted to be laid down. This omission is designed, as any considerations *à priori* of the mutual relations of laws to each other, apart from convenience of administration, are too abstract to find a place in an elementary treatise, and may well wait for solution till the component parts of the code have been to a great extent completed.

Arrangement immaterial as compared with composition of Acts comprising code.

To say the truth, promoters of codification would seem to be too much given to theoretical in preference to practical considerations. They spend much labour in determining the proper arrangement of a code before they have attempted to draw an Act or series of Acts embodying even partially any one branch of the law intended to be included in such code. Yet if the statute

book were once divided into a number of well-drawn Acts embodying both Statute and Common Law, all that would be required to make a code would be to group those Acts according to some convenient arrangement, probably according to the exigencies of the judicial or administrative departments of the Government. A good code is a collection of good Acts, in the same way as a good library is a collection of good books, or a good picture-gallery a collection of good pictures. The exact arrangement of the several Acts in the code is of very little importance as compared with the excellence of the Acts themselves; in the same way, to continue the comparison, as in the case of a library or picture-gallery the character of the books or pictures, far more than their relative arrangement, determines the value of the whole collection. Moreover a good Index is in practice a not ineffectual cure for any defects in the arrangement of a code, a library, or a picture-gallery.

Excellence of English law in substance though uncouth in form.

Having thus deviated into questions of general legislation, it may be well to remark that the writer does not concur in the views of those critics who underrate English law, as compared with foreign codes, and object altogether to Parliamentary supervision of English legislation. Uncouth although it may be in form, English law is just and specific in its directions to an extent never yet attained by a foreign code; and leaves (and this is the practical perfection of law) less to the discretion of the judge than any other system of jurisprudence.

Possibility of improving form without injuring substance.

The real problem is to attain the advantages of a systematic code without destroying the fulness of expression and copiousness of illustration which characterise English law; that such an attainment is possible by gradual steps the writer has endeavoured elsewhere to show, and he need not here repeat his views.

Observations on Parliamentary supervision.

With respect to Parliamentary supervision, it is difficult to conceive a more searching scrutiny than an opposed Bill when in Committee receives at the hands of Parliament; to dispense with such a scrutiny in the case of new legislation would be most unadvisable. On the other hand, the evils of Parliamentary interference are no doubt seriously felt with respect to laws, the principles of which have been finally settled by the Legislature, and which it is desirable to codify or consolidate with a view to give symmetry to their form without alteration of their substance. To such a codification or consolidation the House of Commons too often creates insuperable obstacles by reviving old subjects of controversy, and by insisting on discussing settled principles. The duty of Parliament in such cases would seem to be to ascertain only that the new Bill correctly represents the old law. To effect this, all that is required would be to appoint in each House of Parliament a committee charged with the consideration of such Bills, and to have it understood that Bills once approved by such committees should pass without discussion.

It remains only to add that the writer was assisted in the work by Mr. Jenkyns, the

Assistant Parliamentary Counsel,* Mr. C. P. Ilbert,† Mr. G. A. R. FitzGerald, and other friends have also afforded great aid by suggestions and criticisms made during the progress of the work through the press.

HENRY THRING.

November 10, 1877.

* Afterwards Sir Henry Jenkyns, K.C.B.
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PRACTICAL LEGISLATION.

CHAPTER I.

INTRODUCTORY OBSERVATIONS.

In the following pages the term "Act" will be used in place of "Bill," and "section" in place of "clause," though an Act while in the draftsman's hands is more correctly termed a Bill, and its sections "clauses."

The reader must bear in mind that many of the Acts, notably the Merchant Shipping and Bankruptcy Acts, quoted as examples in the following pages, have been repealed or altered since this treatise was first written.

1. Mode in which a draftsman should prepare himself to draw Acts.

When instructions for an Act are given to a draftsman, his first step should be to acquaint himself with the *whole* of the existing law relating to the subject-matter of the Act which he is directed to prepare.

Complete knowledge of law essential.

This completeness of knowledge is essential, for so complex are the relations of the various parts of English law that however limited the scope of

an Act apparently may be, yet the law with which it deals may chance to be an offshoot of some larger branch of jurisprudence, and the draftsman, by the alteration of a definition or the introduction of a superfluous provision, may unintentionally subvert a settled principle of common law or disturb a series of legislative enactments. Every Act in which a fine is imposed affords an example of what has been said. Various Acts define the mode in which fines are to be enforced, and award a scale of imprisonment to be inflicted in default of their being paid. A draftsman ignorant of these Acts will almost certainly contravene their provisions by altering the process for enforcing the fines or the scale of imprisonment. The draftsman must also as before mentioned be careful to bear in mind the Interpretation Act.

Method of getting up law.

If the draftsman approaches a subject for the first time, he will do well, as a first step, to endeavour to obtain a general view of its whole extent. This may be done by reading any modern treatise containing the law. The sooner, however, that he discards such a treatise, and has recourse to the original authorities, the more readily will his task be accomplished of arriving at an accurate knowledge of his subject.

In getting up the statute law it is a convenient plan to obtain King's Printer's copies of the Acts

required, and, tying them together, to read them through, beginning with the last Act, and so on up to the earliest, striking out the repealed provisions.

In studying the case law, the best method is to discover the leading case on a given point, and having thoroughly mastered its principles, to pursue the law through all subsequent cases to the date of the last decision. A little practice, aided by an index of cases, will enable the student to complete his investigation very rapidly.

Cases readily range themselves into two classes, namely, those that lay down new principles, and those that merely illustrate the application of known rules. A reference to the headnotes will generally suffice to give a sufficient knowledge of an illustrative case, while a case laying down a new principle of law is, to the extent to which the principle is new, a leading case, and must be thoroughly mastered in detail.

This distinction between leading cases and illustrative cases is most important in reference to legislation. Leading cases constitute in effect judicial legislation, and admit of being codified by having their principles expressed in a legislative form. Illustrative cases are merely explanations or illustrations of the law, and may either be dismissed altogether by the draftsman,

or have their influence on legislation expressed by the insertion of a few words in a section to remove a doubt or explain a difficulty.

Take, as examples of the difference between cases laying down new principles of law or judicial enactments and merely illustrative cases, two decisions in relation to bills of exchange.

The negotiability of a bill of exchange was determined by a judicial decision. This decision, being followed, soon passed into the domain of settled law, and, when thus established, amounted to an enactment that bills of exchange are negotiable.

The decision in the case of *Rees* v. *Warwick*, 2 B. & Ald. 113, on the question whether a letter from the drawee to the drawer, stating "your bill £100 shall have attention" amounts to an acceptance, involves no principle or general proposition of law, but is merely an illustration of the law in a particular case.

If the subject-matter of a proposed Act be very extensive, the general case law must be studied in a text-book, and the method recommended of going back to a leading case and tracing the law downwards must be reserved for such points as from their difficulty or importance deserve to be set aside for special investigation.

In studying the common law, the earlier authorities, as for example, Coke upon Littleton

and Hawkins' Pleas of the Crown, should be consulted in preference to more modern books. The common law having thus been traced to its origin, the later treatises may be looked at for the purpose of ascertaining, in a compendious manner, the numerous changes introduced by statute or by judicial decisions in almost every department of that law.

Whatever method of studying the law be adopted, the draftsman should as far as possible trust to his memory for collecting the results, making notes very seldom, and those extremely concise, in the nature of an index indicating where important propositions of law are to be found rather than in the form of extracts from or a statement of the law itself. By adopting this plan he will acquire a habit of carrying in his mind a long and complicated set of provisions for a time sufficient to pass the whole in review, and thus to ascertain the true relation which the various parts bear to each other, a process essential to the completion of a clear and well-arranged scheme of legislation.

Where any considerable alteration of the law is to be effected, the draftsman will do well to keep a record of the law which he has acquired, and of the changes introduced by the Act which he is preparing, by writing a memorandum containing in concise terms the history of the law which he has

been studying, and pointing out the principal points in which his Act proposes to alter the existing law, adducing, shortly, the reasons for the alterations made.

2. EXPLANATION OF CERTAIN TERMS USED IN WORK.

Before concluding this chapter, it will be convenient to explain the sense in which the expressions "Act of Parliament" and "enactment" are used in this work, and to point out the meaning of a division which has been made of Acts of Parliament into simple and complex Acts.

Act of Parliament.

An Act of Parliament may for the purpose of this work be considered as a series of declarations of the Legislature enforcing certain rules of conduct, or conferring certain rights upon or withholding them from certain persons or classes of persons.

This description of an Act of Parliament includes a principal Act with its various amending Acts, and this is intentional; for a series of Acts relating to the same subject is in fact, and ought for all purposes of arrangement to be treated as, a single Act of Parliament.

Enactments.

The separate declarations of the Legislature contained in an Act of Parliament will be called Enactments.

It is possible, of course, that an Act may contain only one enactment, and in that case there is no distinction between "Act of Parliament" and "enactment."

Acts are referred to as simple and complex Acts. An Act is simple when its principle can be declared in one enactment and the whole of the Act is employed in working out that principle. Simple and complex Acts.

For example, the Stock Certificate Act, 1863 (26 & 27 Vict. c. 28), is a simple Act, as the principle that a person may obtain a stock certificate is declared in a single enactment, while the remainder of the Act is occupied with showing how the principles declared in such enactment are to be worked out in detail.

On the other hand, the Land Drainage Act, 1861, is a complex Act, as it deals in three parts with the following different legal heads: Part I. The issue of Commissions of Sewers for new areas on recommendation of Inclosure Commissioners; Part II. The constitution of elective drainage districts on the application of certain proprietors; and Part III. The power of private owners to procure outfalls. Again: The Irish Church Act, 1869, is a complex Act, as it consists (1) of the disestablishment, and (2) of the disendowment of the Church. 24 & 25 Vict. c. 133. 32 & 33 Vict. c. 42.

The above terms make no pretensions to logical accuracy, but will be found convenient for describing certain species of enactments and certain descriptions of Acts which practically must be dealt with by the draftsman as requiring different modes of treatment.

CHAPTER II.

ARRANGEMENT OF SUBJECT-MATTER OF AN ACT.

3. DIFFICULTY OF ARRANGEMENT.

POSSESSED of a full knowledge of his subject the draftsman will, if the Act be a long one, for example, an Irish Church Act (*see* the Irish Church Act, 1869, 32 & 33 Vict. c. 42); an Irish Land Act (*see* the Landlord and Tenant (Ireland) Act, 1870, 33 & 34 Vict. c. 46); a Land Transfer Act (*see* The Land Transfer Act, 1875, 38 & 39 Vict. c. 87); an Explosive Substances Act (*see* The Explosive Substances Act, 1875, 38 & 39 Vict. c. 37), feel himself bewildered by the multiplicity of the enactments and the extent of his task.

4. SELECTION AND STATEMENT OF PRINCIPLES.

His first step must be, in the case of a simple Act, to settle the principle or leading motive, and in the case of a complex Act the several principles or leading motives of the Act on which he is engaged.

With respect to the mode in which the principle is to be selected, and where there is more than one principle in the Act the arrangement of the principles, the draftsman will, where an Act is of political consequence, be guided by the express

instructions of the minister. Before an Act of political importance is introduced, an able minister settles in his own mind the questions on which divisions are to be taken, and forms a general idea of the mode in which those questions should be presented to Parliament. He then instructs the draftsman to follow his directions in these respects, and to frame his Act in accordance with the leading questions to be submitted to Parliament.

In framing his instructions the minister will be greatly assisted by the draftsman laying before him a memorandum describing accurately the existing law. Such a document will clear the ideas of both the minister and his subordinate.

In a simple Act, the principle when selected must be enunciated in its most concise form at the very outset of the Act either in one section or in two or more consecutive sections, as the subject may require. In a complex Act, the principles should be arranged in different parts of the Act, and each part of the Act should be treated as a simple Act, and contain its principle enunciated in the most concise form at the outset of the part. In short, the test of the arrangement of an Act or part as respects the principle, is this: If the reader, after mastering the first two or three sections, comprehends the whole drift of the Act or of the part, the Act or part is in that respect well arranged. The Act or part is as regards

principle ill-arranged in proportion as the principle is distributed throughout a number of sections, and broken up by conditions and provisions from which the reader has to extract it bit by bit.

This arrangement is to be recommended both for Parliamentary and for practical reasons. It enables Parliament to decide at once on the principle of an Act unembarrassed by the consideration of details, and it places before the reader at the outset a clear view of the law intended to be enacted, without the confusing intermixture of the conditions under which and the mode in which that law is to be administered. The principle thus being settled, the conditions can be considered separately, and no confusion arises between objections of principle and objections of detail.

5. ILLUSTRATIONS OF SELECTION AND STATEMENT OF PRINCIPLES IN SIMPLE ACTS.

The importance of selecting the principles and stating them in a concise form at the outset of an Act or division of an Act is so great that it will be illustrated by numerous examples, beginning with simple Acts and proceeding to complex Acts.

The simplest form of enactment is contained in one short clause. For example, the Compulsory Church Rate Abolition Act, 1868, provides in its first section as follows:

31 & 32 Vict. c. 109.

"From and after the passing of this
"Act, no suit shall be instituted or pro-

"ceeding taken in any ecclesiastical or "other court, or before any justice or "magistrate, to enforce or compel the "payment of any church rate made in "any parish or place in England or "Wales."

The passing of that clause abolishes compulsory church rates, and the remainder of the Act is taken up with providing for voluntary church rates, and making the proper reservations for cases in which money had been lent on the security of rates.

The Cruelty to Animals Act, 1876, relating to vivisection, expresses its intention by declaring— 39 & 40 Vict. c. 77.

"That a person shall not perform on a living "animal any experiment calculated to give pain, "except subject to the restrictions imposed by the "Act," and imposes a penalty on any person performing any experiment calculated to give pain, in contravention of the Act. Under that section, all experiments on living animals calculated to give pain are *primâ facie* prohibited, and, as might be expected, the remainder of the Act is employed in declaring the conditions under which, in certain cases and for certain purposes, experiments may be performed on living animals.

Perhaps the best illustration of the concentration of the principle of a whole Act into one

16 & 17 Vict. c. 51.

clause is found in the Succession Duty Act, 1853, s. 2, which is as follows:

> "Every past or future disposition of "property, by reason whereof any person "has or shall become beneficially entitled "to any property, or the income thereof, "upon the death of any person dying "after the time appointed for the com- "mencement of this Act, either imme- "diately or after any interval, either "certainly or contingently, and either "originally or by way of substitutive "limitation, and every devolution by law "of any beneficial interest in property, "or the income thereof, upon the death "of any person dying after the time "appointed for the commencement of "this Act, to any other person, in "possession or expectancy, shall be "deemed to have conferred or to confer "on the person entitled by reason of "any such disposition or devolution a "'succession'; and the term 'successor' "shall denote the person so entitled; and "the term 'predecessor' shall denote "the settlor, disponer, testator, obligor, "ancestor, or other person from whom "the interest of the successor is or shall "be derived."

This section embraces not only the whole subject matter of succession duty, but that of the Legacy Duty Acts also, and the remainder of the Act is occupied in excepting successions subject to the Legacy Duty Acts and in illustrating particular examples of sect. 2, or in making rules for carrying sect. 2 into effect.

6. ILLUSTRATIONS OF SELECTION AND STATEMENT OF PRINCIPLES IN COMPLEX ACTS.

A similar mode of arrangement is exemplified by complex Acts.

The Irish Church Act, 1869, provides for (1) the disestablishment, (2) the disendowment of the Church. The disestablishment is enunciated in sect. 2, which is as follows: 32 & 33 Vict. c. 42.

> "On and after the first day of "January One thousand eight hundred "and seventy-one the said union created "by Act of Parliament between the "Churches of England and Ireland shall "be dissolved, and the said Church of "Ireland, herein-after referred to as "'the said Church' shall cease to be "established by law."

Nothing further was required to complete that enactment. The disendowment and formation of a new Church body occupy the whole of the remainder of the Act.

The Land Drainage Act, 1861, consists of the following heads, divided in the Act into separate parts: Part I. The issue of Commissions of 24 & 25 Vict. c. 133.

Sewers for new areas on recommendation of Inclosure Commissioners. Part II. The constitution of elective drainage districts on the application of certain proprietors. Part III. The power of private owners to procure outfalls.

A reference to Part I. (s. 4), to Part II. (ss. 63 & 64), and Part III. (s. 72) will illustrate the rule of enunciating in one section the principle of a part of an Act.

35 & 36 Vict. c. 33.

The Ballot Act, 1872, had two objects in view, the alteration of the law relating to the nomination of candidates at Parliamentary elections and the alteration of the law relating to the mode of voting. It was necessary to separate the essential conditions of the law from the detailed provisions intended to carry it into effect. Accordingly sect. 1 lays down the rules for nomination, and sect. 2 creates a secret ballot with all its necessary conditions; while the detailed provisions required to give effect to a secret ballot are contained in a schedule of sixty-three articles.

In the Home Rule Bill of 1886, entitled Irish Government Act, 1886, a good example will be found of the compression into a few sentences, at the beginning of the Bill, of the whole principle of the measure. Section 1 declared, On and after the appointed day there should be established in Ireland a legislature consisting of her Majesty the Queen and an Irish legislative body. The second

section declared that, with the exceptions and subject to the restrictions in this Act mentioned, it shall be lawful for her Majesty the Queen by and with the advice of the Irish legislative body to make laws for the peace, order and good government of Ireland, and by any such law to repeal and alter any law in Ireland.

Then followed, in the 3rd and 4th sections, the restrictions on the power of the legislative body, divided into two classes, first, the subjects on which they must not legislate ; 2nd, the principles which they were prohibited from adopting in legislation.

The prerogatives of the Queen with regard to summoning, proroguing and dissolving the Irish legislative body, were defined in the fifth and sixth sections. It is obvious that if these six sections had been passed the Bill would have been in effect carried, as the remainder consisted of provisions necessary to give effect to so great a change in the constitution.

7. OBSERVATIONS AS TO MODE OF FRAMING PRINCIPAL AND SUBORDINATE ENACTMENTS.

Before concluding these illustrations it may be well to call attention to a difference in the mode of expressing the principle of an Act in cases where the principle cannot be enunciated in one enactment (as in the example of section one of the Compulsory Church Rates Abolition Act), but must range over several enactments. Where several enactments are required, there are two

modes of dealing with the matter. Either the principle may be enunciated by itself in an independent enactment, without any words connecting it with its subsequent subordinate enactments, or the principle may at the outset be linked on by connecting words to the whole or to any part of its subordinate enactments. Similarly, the subordinate enactments may be expressed in words wholly unconnected with each other, or may be partially connected by words referring from one enactment to the other.

As an illustration of the first mode of dealing, take the Appellate Jurisdiction Act, 1876. That Act declares, in four separate and unconnected sections (1) the cases in which an appeal lies to the House of Lords; (2) the form of appeal to the House of Lords; (3) the attendance of a certain number of lords of appeal required at hearing and determination of appeals; and (4) the appointment of Lords of Appeal in Ordinary by her Majesty.

39 & 40 Vict. c. 59.

The second mode is shown in the principal and subordinate enactments found in the Land Drainage Act, 1861, in which the section enunciating the principle provides, by reference to the subsequent clauses, that it must be made *on the recommendation of the commissioners*, and *on such application and subject to such conditions* as are therein-after mentioned. Parliament, therefore,

24 & 25 Vict. c. 133.

in passing the first section, pledged itself to require the recommendation of the Commissioners, and in a less degree pledged itself to the requirement of an application by the proprietors and to the other conditions of the Act. On the other hand, in the case of the Appellate Jurisdiction Act, Parliament, in passing the first section, did not pledge itself to require a particular form of appeal or to require the attendance of the Lords of Appeal in Ordinary.

The selection of the one or the other of the above methods of dealing with a principal enactment accompanied with a series of subordinate enactments, depends on Parliamentary considerations of the same character as those on which the arrangement of principles of law depends. Sometimes it is expedient to fetter the principal enactment with a direct reference to subordinate enactments, in order to show that Parliament is not asked to carry the law beyond a certain limit. On the other hand, in many cases it is desirable to take the opinion of Parliament on the principal proposition in its barest form, and stripped of every possible detail that can distract attention, or lead to votes being given on a side issue, instead of on the principle involved. Such questions must be determined by the minister, rather than by the draftsman, but it is impossible to overrate their importance, as an Act not unfrequently is

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lost or won according as a division is taken on the right point and at the right time, on a simple or on a complicated issue.

Where political and Parliamentary considerations are not concerned, it is perhaps, on the whole, most convenient to introduce into the principal enactment references to the succeeding enactments, as the reader recollects a series of enactments when connected by referential words more readily than a chain of unconnected provisions.

8. General rules of arrangement of Act, Rule 1.

Proceeding from the principle to the arrangement of the remainder of the Act the draftsman will find himself assisted by the following rules, first, in sifting his materials in such a manner as to enable him to form a clear conception of the subject-matter with which he is dealing, and of the relations of its several parts to each other; and, secondly, in the practical task of arranging the sections of his Act and grouping them under appropriate headings.

Rule I.—Provisions declaring the law should be separated from and take precedence of provisions relating to the administration of the law.

38 & 39 Vict. c. 87.

Take as an example the Land Transfer Act, 1875, it will be found that the provisions relating to registration of title are contained in the first four parts of the Act, whilst the

administration of the law stands by itself in the fifth part.

The first part of the above rule is founded on the consideration that it is convenient for the purpose of clearness to separate the law from the authority to administer the law, and the reason for giving precedence to the law over administration is that until the law to be administered is determined the proper authority to administer that law cannot be judged of. Any verbal difficulty created by referring to the administrative authority before its constitution is stated may be avoided by the use on the occasion of the first mention of the authority of the phrases "the court by this Act constituted," "the commissioners in this Act referred to," or other referential phrases. The latter part of the rule, however, giving precedence to the law over the authority which administers the law is only applicable to a limited number of cases. Frequently the subject-matter is of such a character as to require the authority to precede the law. Take, for example, the law as to coroners; the better mode would seem to be to create the coroner before laying down the law of inquest, on the ground that the law would seem to be an emanation from the authority, rather than the authority an institution established for administering an antecedent law. A similar observation would apply to an Act

relating to sheriffs. In short, the rule is subject to so many exceptions that it is stated principally on the ground that any rule in so complicated a matter as legislation affords assistance to the draftsman, although it admits only of partial application.

A notable example of a case in which the above-mentioned rule of putting the law before the administration has not been followed is found in the Prison Act, 1865. That Act begins by declaring the local bodies on whom is imposed by common law or by statute the obligation to maintain prisons. It then proceeds to lay down the rules with respect to the appointment of officers, the discipline of prisoners, and other matters relating to the prison, whilst it relegates to Part II. the law of prisons.

28 & 29 Vict. c. 126.

The reason for this disregard of the general rule was that in the particular case of prisons the law was altogether subordinate in importance to the provisions relating to the establishment of prisons, and it was thought advisable to submit to Parliament the important questions relating to the maintenance and administration of prisons, in preference to beginning with the comparatively insignificant and little known provisions relating to the law.

Rule II.—The simpler proposition should precede the more complex and in an ascending scale of propositions the less should come before the greater.

9. General rules of arrangement of Act, Rule 2.

For example, in an Act relating to offences against property, theft should precede theft with violence, or robbery, and so forth; similarly, in dealing with the authority to administer the law, the less should precede the greater, the local the central, *e.g.*, in the Public Health Act, 1875, the local sanitary authority is dealt with before the Local Government Board.

38 & 39 Vict. c. 55.

This rule also is in a great measure arbitrary, and suggested with a view of enabling the draftsman to form a clear conception of the relative bearing of sections, rather than to make it imperative on him to adopt it on all occasions. Such a rule must constantly yield to political pressure, and the draftsman is frequently required by his instructions, or by the special circumstances of the case, to put the more complex proposition before the less complex, or the higher authority before the lower.

On the whole, however, experience would seem to suggest that the observance of the rule leads to clearness and brevity in drawing; and uniformity in Acts of Parliament is of so much consequence that it is most desirable that some general rule of arrangement should wherever practicable be adopted.

10. General Rules of Arrangement of Act, Rule 3.

Rule III.—Principal provisions should be separated from subordinate provisions. The latter should be placed towards the end of the Act, while the former should occupy their proper position in the narrative of the occurrence to which they refer.

Principal provisions are such as declare the material objects of the Act.

Subordinate provisions are such enactments as are required to give effect to the principal provisions by declaring in detail the manner in which they are to be worked out or by adding enactments to complete the operation of the principal provisions.

38 & 39 Vict. c. 55.

Taking as an illustration the Public Health Act, 1875, the sections in Part II. constituting sanitary districts and sanitary authorities are principal provisions; the sections in Part VIII. altering the areas of districts and referring to the formation of united districts are supplemental provisions.

In the Representation of the People Act, 1884, 48 & 49 Vict. c. 3, the law as to the extension of the franchise is set forth in the first five sections of the Act; then follows, under the heading Supplementary Clauses, the definition of the franchise, the saving provisions, the construction of the Act, and the Repeal of Acts.

This mode of arrangement will doubtless be objected to by persons who are desirous of acquiring a partial knowledge of an Act without reading the whole, as being defective by reason of

its not grouping under one head all the provisions relating tothe same subject-matter.

It has, however, a twofold advantage—first, as respects Parliament, of submitting to the Legislature material provisions on which they may decide without being embarrassed with subordinate consequential regulations; secondly, as respects readers of the Act, by enabling them to obtain readily an intelligible view of the material provisions of the law before entering upon details involving no question of principle and interesting only to persons actually engaged in legal business.

11. General rules of arrangement of Act, Rule 4.

Rule IV.—(*a*) *Local or exceptional provisions,* (*b*) *temporary provisions, and* (*c*) *provisions relating to repeal of Acts should be separated from the other enactments, and placed by themselves under separate headings.*

A good illustration of local or exceptional provisions is found in the Land Transfer Act, 1875. In that Act, the local registries for the counties of Middlesex and Yorkshire are dealt with at the end as separate subject-matters. By thus treating them as exceptions to the remainder of the Act confusion is avoided, and the provisions are found without difficulty, being arranged under a separate heading.

38 & 39 Vict. c. 87.

Examples of Repeal clauses are found at the

end of almost every Act which disturbs existing statute law.

12. GENERAL RULES OF ARRANGEMENT OF ACT, RULE 5.

Rule V.—Procedure and matters of detail should be set apart by themselves, and should not, except under very special circumstances, find any place in the body of the Act.

The above-mentioned matters should either be enacted in a schedule, or what is far better (where possible) be left to be prescribed by a court or department of the Government. For example, in the Companies Act, 1862, the model regulations for a company are prescribed in the schedule; the rules for winding up companies are directed to be framed by the court.

25 & 26 Vict. c. 89.

25 & 26 Vict. c. 63.

By the Merchant Shipping Act Amendment Act, 1862, section 25, the Queen can by Order in Council make regulations as to lights, fog signals, and sailing rules, while in other Merchant Shipping Acts, the Board of Trade take large powers of making orders for regulating the mercantile marine. In the Trade Marks Registration Act, 1875, the principles only of the registration are laid down in the Act, whilst the general rules pointing out the mode of registry and the classification of trade marks are directed to be made by the Lord Chancellor.

38 & 39 Vict. c. 91.

The adoption of the system of confining the attention of Parliament to material provisions

only, and leaving details to be settled departmentally, is probably the only mode in which parliamentary government can, as respects its legislative functions, be satisfactorily carried on. The province of Parliament is to decide material questions affecting the public interest, and the more procedure and subordinate matters can be withdrawn from their cognisance, the greater will be the time afforded for the consideration of the more serious questions involved in legislation. Any attempt to evade the vigilance of Parliament by relegating to departments important matters can always be prevented by requiring the rules made to be laid before Parliament before they come into force.

13. Summary of general rules of arrangement and observations.

Bearing in mind the above rules it may be useful to state as the result of the examination of a great number of Acts of Parliament, that although the subject-matter of the law is different, the subsidiary provisions for carrying that law into effect admit of being classified under a few heads, and the draftsman will find the following enumeration useful as a guide in sifting the complicated materials often presented to him for framing an Act and also in arranging the Act itself.

The arrangement, then, of an Act should be as follows :

(1) The law or leading principle of the Act.

(2) Administration of the law.
    (*a*) Authority to administer.
    (*b*) Procedure.
(3) Penalties to enforce the law.
(4) Expenses of enforcing Act.
(5) Power to make by-laws.
(6) Exceptional provisions.
(7) Transitory or temporary provisions.
(8) Saving clauses.
(9) Definitions.
(10) Extent of Act if limited.
(11) Duration of Act if limited.
(12) Repeal of Acts.
(13) Short title of Act.
(14) Application of Act to Scotland.
(15) Application of Act to Ireland.

These rules necessarily not only admit of considerable variation but sometimes require it: they will, however, serve as a guide to the draftsman in ordinary cases.

One maxim he must steadily bear in mind, that whatever deviation may be allowed in the arrangement of principles and heads of law as between themselves, the essential conditions of a well-drawn Act of Parliament are that every principle of law and every head of law should be separated from every other principle and head of law, and should form the subject of a separate enactment or series of enactments, and that in

framing any enactment or series of enactments, the principle or head of law contained in such enactment or enactments should be stated at the outset, and the mode of giving effect to that principle or head of law should be dealt with by subordinate enactments, or otherwise according to circumstances.

Frequently, when the draftsman has sifted the materials of his Act according to the foregoing rules, and is about to turn his attention to the enactments, he will find a difficulty in ascertaining their mutual relations to each other; in other words, the subject, although reduced in bulk, is still too large for him to classify throughout. His course here is to work out separately and in complete detail each head of the law as if it constituted the whole subject-matter of the Act. Such a course necessarily involves a great deal of labour, but when the process is completed he will see the mutual relations of the several parts of the Act, and will frequently be able to generalise his Act to a degree he could not have anticipated until he had completed the separate groups. *Divide et impera* is the motto of a draftsman as well as of a conqueror. The one thing needful is to make each distinct subject the matter of a separate section, or, if necessary, a separate series of sections, and not at the commencement to aim at conciseness when conciseness is placed in

competition with or in antagonism to clearness of expression, or fulness in working out the details of the law.

Having completed his arrangement of an Act with the whole subject in his mind, the draftsman should scarcely ever alter it materially of his own accord. The consequence of such an alteration is to leave a confused outline of the law, which shows itself in the repetition or omission of necessary provisions, and in a hazy arrangement of the whole Act.

14. OBSERVATIONS ON REFERENTIAL PROVISIONS WHERE REFERENCE MADE TO ANOTHER PART OF THE SAME ACT.

Before quitting the subject of arrangement it may be well to notice a constantly recurring difficulty in planning Acts and constructing sections, namely, the determination of the best mode of dealing with legal subjects which require similar but not identical provisions.

No general rule can be laid down for all cases, but the following suggestions may be useful. Where the provisions of the principal subject are applicable to the subordinate, with few and well-defined exceptions, the best mode would seem to be to pursue the principal subject to its end without regard to the subordinate subject, and then to introduce a clause applying the provisions of the principal to the subordinate subject with certain exceptions.

32 & 33 Vict. c. 111.

For example, the provisions of the Bishops Resignation Act, 1869, were drawn as if they

related only to English bishoprics, although it was intended from the first to extend them to the bishopric of Sodor and Man and to archbishoprics.

This application to the two subordinate subjects of the provisions relating to the principal subject is made by sect. 11 in the case of Sodor and Man as follows:

> "This Act shall apply to the bishopric "of Sodor and Man in the same manner "in all respects as if it were a bishopric "in England, with the following excep- "tions:
>
> "(1) If," &c.
>
> "(2) If," &c.
>
> "(3) The Bishop of Sodor and Man "shall not," &c.

And in the case of the archbishoprics by sect. 12 as follows:

> "A bishop coadjutor may be appointed "in the case of an archbishop being "incapacitated by reason of permanent "mental infirmity from the due per- "formance of his duties, in the same "manner in all respects as if such arch- "bishop were a bishop and his arch- "bishopric a bishopric, and all the "provisions of this Act shall apply "accordingly, with the following addi- "tions and exceptions:

"(1) That," &c.

"(2) That," &c.

"(3) That," &c.

On a similar principle, the sixth and seventh parts of the Companies Act, 1862, apply the Act to companies existing at the passing of the Act.

25 & 26 Vict. c. 89.

Where English Acts are intended to be applied to Scotland and Ireland, confusion is avoided by omitting all special Scotch or Irish terms in the body of the Act, and adding at the end—

"The provisions of this Act shall apply to "Scotland (or Ireland, as the case may require), "with the following modifications; that is to say," and then setting out the modifications.

The use of a generic term with a defining clause will not unfrequently prevent the necessity of overloading an Act with the enumeration of special provisions relating to particular local authorities. For an example of this "The Contagious Diseases (Animals) Act, 1869," sect. 9, may be referred to, which is as follows:

32 & 33 Vict. c. 70.

> "For the purposes of this Act, the "respective districts, authorities, rates, "or funds, and officers described in the "second schedule to this Act, shall be "the district, the local authority, the "local rate, and the clerk of the local "authority."

Take the Act without this section, and endeavour to insert the various authorities in the text, and it will be at once found that almost every section requires a long list of names with special provisions interspersed.

Where a certain portion of the provisions of the principal subject are applicable to the subordinate subject without alteration, and some are totally inapplicable, while others require alteration, the principal subject may be continued to its close, with the exception of the provisions which are applicable, with slight alterations, to both subjects. The subordinate subject may then be introduced, and the former provisions, which are wholly applicable, to the principal subject, be incorporated by reference. Lastly will follow the provisions applicable with slight alteration to the principal and subordinate subjects.

The 4th part of the Companies Act, 1862, illustrates the foregoing observations. The winding-up by the court is the principal subject. This is worked out to its close, with the exception of the provisions incorrectly called "supplemental provisions," being in effect provisions applicable, with slight alterations, to the subordinate subject, as well as to the principal subject, which are postponed. 25 & 26 Vict. c. 89.

Then follows the main subordinate subject, "voluntary winding-up," incorporating the powers

of the liquidators (sections 133–137), which are specially drawn with a view to incorporation.

Winding-up subject to supervision, comes next to voluntary winding-up, and the differences, or rather the resemblances, between that process of winding-up and the preceding processes are stated in sections 148–152. Lastly come the "supplemental provisions," making general regulations applicable to all three systems.

In whatever manner referential sections are arranged, great care and skill are required in making the referential words take up the principal enactments at the proper points, and the maxim that repetition is better than ambiguity should be constantly borne in mind.

In any event the draftsman should not be satisfied that he has properly accomplished his task until he has read through the principal enactments with the modifications proposed by the referential expressions, and finds that when so read they effect the object proposed.

However great his difficulty, the draftsman must exclude any necessity for the adoption of the rule of "reddendo singula singulis," or reading the sentences distributively; a rule which, like other rules of construction, has arisen from the obligation imposed on the courts of attaching an intelligible meaning to confused and unintelligible sentences.

Referential provisions will naturally find a place at the close of the enactments to which they are referential.

15. OBSERVATIONS ON REFERENTIAL PROVISIONS WHEN REFERENCE MADE TO OTHER ACTS.

The referential legislation mentioned above, in which enactments in one part of an Act refer to or incorporate wholly or partially enactments contained in another part of the same Act must be distinguished from referential legislation in which enactments in one Act refer to or incorporate wholly or partially another Act or Acts. The last-mentioned mode of legislation is proper or improper according to circumstances. It is proper where the object of the reference is to incorporate certain general Acts, or parts of general Acts made for and adapted to incorporation. For example, when powers of acquiring land are proposed to be taken, the Lands Clauses Consolidation Act, 1845, must be incorporated with the proper modifications adapted to the cases of voluntary or compulsory powers of purchase. Again, in all Acts imposing small penalties the Summary Jurisdiction Acts must be attracted.

8 & 9 Vict. c. 18.

11 & 12 Vict. c. 43.

It must be recollected that the Interpretation Act, 1889, if not expressly excluded, so far as it is applicable necessarily affects every Act.

Other instances may be cited, and it is the duty of a draftsman to make himself thoroughly acquainted with all general Acts required to be

incorporated, and with the best form of incorporating them, and he ought not, without express instructions, to deviate from or modify the provisions of the incorporated Acts, which are well understood, and are capable of being incorporated without creating any difficulty or raising any question of construction.

The advantages and disadvantages of incorporating a large number of Consolidation Acts will be best learnt by comparing a number of local Acts to which the series of Acts called the Consolidation Acts of 1845 and 1847 are applicable. The advantages are that it secures uniformity of legislation and saves the time of Parliament. The disadvantages are that it reduces an Act to a mere outline, presenting to the reader no clear view of the law, and obliging him to fill in the details either from recollection or by a tedious examination of a number of distinct Acts. No doubt the system as adopted in private legislation is inadmissible in public Acts in its full extent, but it must not on that account be wholly set aside; for when the reference is to a distinct operation which is only subsidiary to the main objects of the Act, *e.g.*, the purchase of lands in a sanitary Act, or the borrowing of money in a municipal Act, the possibility of referring to a distinct Act regulating such an operation conduces to clearness, and prevents the time of

Parliament being wasted in considering unnecessary details. It is the application of the principle of incorporation to cases to which it is unsuited, not its adoption in a great number of cases where it is useful, which is to be condemned.

The referential legislation to be always avoided consists in referring in one Act to provisions of another Act, which do not readily lend themselves to incorporation, and require to be referentially modified before they can be made to harmonise with the incorporating Act. An example of this description to be noticed for the purpose of being avoided may be found in the Nitro-glycerine Act, 1869, sect. 6, which applies to searching for nitro-glycerine all the Gunpowder Acts relating to searching for gunpowder. 32 & 33 Vict. c. 113.

The subject of referential legislation ought not to be passed over without the addition of a few words condemning the practice of passing an Act which cannot be understood without referring to the enactments contained in some other Act. This is done with a view of facilitating the passing of an Act through Parliament by partially withdrawing from the consideration of the legislature the subject-matter with which it has to deal. Such a system is calculated to make Acts of Parliament unintelligible to the ordinary reader,

who is, nevertheless, called upon to obey the law.

The observations of Lord Justice Mathew in the case of Knill *v.* Towse * explain fully the inconveniences that have occurred from this kind of legislation as adopted in the Local Government Act, 1888. "The difficulty has arisen not from anything inherent in the subject itself, which is simple enough, and might be quite simply treated, but from the mode of legislation now usual in these matters. Sometimes whole Acts of Parliament, sometimes groups of clauses of Acts of Parliament, entirely or partially, sometimes portions of clauses are incorporated into later Acts, so that the interpreter has to keep under his eye, or if he can, bear in his mind, huge masses of bygone and not always consistent legislation in order to gather the meaning of recent legislation. There is very often the further provision that these earlier statutes are incorporated only so far as they are not inconsistent with the statute into which they are incorporated, so that you have first to ascertain the meaning of a statute by reference to other statutes, and then to ascertain whether the earlier Acts qualify only or absolutely contradict the later ones, a task sometimes of great difficulty, always of great labour—a difficulty and labour, generally speaking, wholly un-

* Law Reports, 24 Q.B.D. 195.

necessary. It has, indeed, been suggested that to legislate in this fashion, keeping Parliament in truth in ignorance of what it is about, is the only way in which at the present day legislation is possible. We know not whether the suggestion is correct; what we do know is that this procedure makes the interpretation of modern Acts of Parliament a very difficult and sometimes doubtful matter. We, the judges, have perhaps the least cause to complain. We sit here for the purpose, among other things, of interpreting Acts of Parliament, and we bring, or ought to bring, to our tasks trained and experienced intellects. But in practical matters of everyday concern, such as the possession and exercise of the franchise, it is of the last importance that the law conferring it, and the rules which govern its exercise, should be easily comprehensible by the mass of ordinary voters. We are well aware that protest as to past legislation is unavailing, but for the future to draw attention to a plain evil may perhaps be the first step towards its remedy." The only remedy would seem to be that Parliament should persistently refuse to pass incorporating clauses unless they comply with the conditions above mentioned.

16. OBSERVATIONS ON REFERENTIAL WORDS.

As to Referential Words.—The expressions "herein-before" and "herein-after," and re-

ferences to particular sections by their numbers, should be carefully avoided wherever practicable, for the position of sections is so frequently changed in the passage of an Act through the House of Commons that the expressions become inaccurate. Moreover the word "herein-before" is frequently ambiguous, as sometimes it refers to the section alone in which it is found, and sometimes to the Act itself.

The above observation does not, of course, apply to referring in a subsequent Act to sections of an Act which has already become law, inasmuch as no alteration can take place in their arrangement.

17. OBSERVATIONS ON DIVISION OF ACTS INTO PARTS AND HEADINGS.

A few remarks may be made, in conclusion, on the division of Acts into parts, and the grouping of clauses under separate headings.

The first step in this direction was taken in the Consolidation Acts of 1845, which were most ably drawn by Mr. Booth, late Secretary of the Board of Trade, whilst holding the office of Counsel to the Speaker.

In these Acts separate groups of sections are prefaced with a statement—

"With respect to (*the subject-matter of the group of sections*), "be it enacted as follows: (The sections forming the group being inserted without the introductory words "And be it enacted that," which, at that time, it was the

practice to insert at the beginning of every section in the Act.)

The above plan of grouping sections may still be adopted with advantage where it is intended to enable provisions to be incorporated with other Acts (as was the case in the Consolidation Acts), or where in the same Acts certain provisions are to be applied to a different subject matter.

The division into parts, and the grouping under headings or titles, was adopted in the Merchant Shipping Act of 1854 on the model, in some degree, of the Code of New York, and, if used judiciously, it facilitates considerably the understanding of an Act. It is, however, a mistake to imagine that a mere mechanical subdivision into parts insures clearness, and in many recent Acts subdivision has been carried to excess. 17 & 18 Vict. c. 104.

As a general rule the division into parts should only be used where the subject matter of the Act involves different heads of law, each of which might without impropriety form the subject matter of a separate Act, or contain classes of enactments such as "Supplemental Provisions," or "Temporary Provisions" distinct in their character from the rest of the Act.

It may be well to mention here that where it is intended to refer in the enactments themselves to the division into parts, as, for example, by using the expressions "this part," "part five," or so

forth, the Act itself should commence (as is the case in the Merchant Shipping Act, 1854, and in the Companies Act, 1862), by declaring that the Act is to be divided into parts, and specifying them. It will thus be out of the power of courts of law to refuse to recognise the division into parts, as being a substantive portion of the Act.

17 & 18 Vict. c. 104.
25 & 26 Vict. c. 89.

The use of headings or titles dividing groups of sections also requires great care. If they are unnecessarily multiplied, they become little more than marginal notes; on the other hand, if clauses are grouped under them, which do not properly fall within the description of the heading, the reader is misled instead of being assisted.

18. OBSERVATIONS ON MARGINAL NOTES.

Marginal notes should receive more attention than is usually given to them. Each note should express in a concise form the main object of the section on which it is made, or should at least indicate distinctly its subject-matter; and all the notes, when read together in the "Arrangement of sections," should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act.

CHAPTER III.

COMPOSITION OF SENTENCES.*

19. CLEARNESS. OBJECT OF PARLIAMENTARY DRAWING.

CLEARNESS is the main object to be aimed at in drawing Acts of Parliament. Clearness depends, first, on the proper selection of words; secondly, on the arrangement and the construction of sentences.

20. ENACTMENT IN ITS SIMPLEST FORM CONSISTS OF LEGAL SUBJECT AND LEGAL PREDICATE.

An enactment in its simplest form is a declaration of the legislature, directing or empowering the doing or abstention from doing of a particular act or thing. Such an enactment consists of a legal subject and legal predicate. The legal subject denotes either the person directed or empowered to do or prohibited from doing the thing mentioned, or when the passive form is used the thing to be done or left undone. The legal predicate expresses what the person is to do or leave undone, or when the passive form is used what is enacted with respect to the thing to be done or to

* See Coode's "Legislative Expression; or, the Language of the Written Law," a work which draftsmen are recommended to read, and to which I am much indebted in writing the instructions contained in this chapter.

be left undone. If the law is imperative, the proper auxiliary verb of the predicate is "shall" or "shall not," if permissive, "may." For example :

Subject.	*Predicate.*
Every Court	*shall* take judicial notice of the seal of the Bankruptcy Court.
This Act	*may be* cited as "The Companies Act, 1862."
A sheriff	*shall not*, after the commencement of this Act, be liable for the escape of a prisoner.

The expressions "It shall be lawful," "It is the duty," and similar impersonal forms, should not be used when the auxiliary verbs "shall," "shall not," or "may" will do equally well. Sometimes it is useful to substitute "It shall be lawful" for the auxiliary form of expression, in order that verbs in the infinitive mood may be used in the dependent sentences. The inclination of the Courts to construe "may" as sometimes imperative in an Act of Parliament requires that in doubtful cases the draftsman should add words such as "The Court may *in its discretion*," or "may *if it thinks it expedient*," and so forth. Where it is intended that a person should be exempted from the obligation to do a thing to which he would generally be subject (a very rare

form of expression), it would be well to say "It shall be lawful for A.B. not to do so and so," as the phrase "may not" would imply a command that he should not do it. It is almost needless to add that expressions such as "may and are hereby required" are redundant, and should never be used.

21. MODE OF GROUPING LEGAL SUBJECTS.

A number of legal subjects, legal predicates, or independent enactments may be conveniently grouped together. Useful formulas for uniting such groups of legal subjects are as follows:

Land Transfer Act, 1875, 38 & 39 Vict. c. 87, s. 5.

"After the commencement of this "Act the following persons; (that is to say,)

Legal subject, No. 1. "(1) Any person who has contracted "to buy for his own benefit an "estate in fee simple in land, "whether subject or not to in- "cumbrances; and

Legal subject, No. 2. "(2) Any person entitled for his "own benefit at law or in equity "to an estate in fee simple in land, "whether subject or not to in- "cumbrances; and

Legal subject, No. 3. "(3) Any person capable of dispos- "ing for his own benefit by way "of sale of an estate in fee simple "in land, whether subject or not "to incumbrances,

Legal predicate. "may apply to the registrar under this "Act to be registered.

The Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, ss. 322 and 323.

"The following offenders; that is to say,

Legal subject. "(1) Any person who, &c.

Legal subject. "(2) Any person who, &c.

Legal predicate. "shall for each offence be liable to a "fine not exceeding .

22. MODE OF GROUPING LEGAL PREDICATES. Land Transfer Act, 1875, 38 & 39 Vict. c. 87, s. 118.

Legal subject. "The Lord Chancellor, with the concurrence of the Commissioners of her "Majesty's Treasury, shall have power "by general orders from time to time "to do all or any of the following "things:

Legal predicate, No. 1. "(1) To create district registries, "&c.;

Legal predicate, No. 2. "(2) To direct, by notice, &c.;

Legal predicate, No. 3. "(3) To commence registration, &c.;

Legal predicate, No. 4. "(4) To appoint district registrars, "&c.

Legal subject. "The Lord Chancellor may, with the "like concurrence, from time to time

Legal predicate. "make, rescind, alter, or add to any "order made in pursuance of this "section."

23. MODE OF GROUPING INDEPENDENT ENACTMENTS OF A SIMPLE CHARACTER.

Independent enactments of a simple character may be linked together by any of the following formulas:

Companies Act, 1862, 25 & 26 Vict. c. 89, s. 133.

"The following consequences shall ensue upon "the voluntary winding-up of a company.

"The registration of companies under this Act "shall be conducted as follows; that is to "say,

Companies Act, 1862, 25 & 26 Vict. c. 89, s. 174.

"The following enactments shall be made with "respect to registration of title:

Land Transfer Act, 1875, 38 & 39 Vict. c. 87, s. 83.

"The offences herein-after mentioned shall be "punishable as follows; that is to say,"

Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, s. 103.

Sometimes a number of short enactments cannot conveniently be arranged in sub-sections, and in such instances they may be grouped in one section in the following manner:

Enactment, No. 1. "The improvement scheme of a local "authority shall be accompanied by "maps, particulars, and estimates;

Artisans and Labourers Dwellings Improvement Act, 1875, 38 & 39 Vict. c. 36, s. 5.

Enactments, Nos. 2 & 3. "it may exclude any part of the area "in respect of which an official repre- "sentation is made, or include any "neighbouring lands, if the local autho- "rity are of opinion that such exclusion "is expedient or inclusion is necessary "for making their scheme efficient for "sanitary purposes;

Enactment, No. 4. "it may also provide for widening any "existing approaches to the unhealthy "area or otherwise for opening out the "same for the purposes of ventilation "or health;

Enactment, No. 5. "also it shall distinguish the lands pro-

"posed to be taken compulsorily, and
"shall provide for the accommodation
"of at the least as many persons of the
"working class as may be displaced in
"the area with respect to which the
"scheme is proposed, in suitable dwell-
"ings, which, unless there are any
"special reasons to the contrary, shall
"be situate within the limits of the
"same area, or in the vicinity thereof;

Enactment, No. 6.

"it shall also provide for proper sani-
"tary arrangements;

Enactment, No. 7.

"it may also provide for such scheme
"or any part thereof being carried out
"and effected by the person entitled to
"the first estate of freehold in any pro-
"perty subject to the scheme or with
"the concurrence of such person, under
"the superintendence and control of
"the local authority, and upon such
"terms and conditions to be embodied
"in the scheme as may be agreed upon
"between the local authority and such
"person."

An instance of the advantage of grouping enactments in a matter of some complexity may be found in the Irish Church Act, 1869.

32 & 33 Vict. c. 42, s. 10.

"When the annual sums herein-after
"mentioned cease to be paid, compensa-

"tion shall be made in respect thereof "by payment of capital sums as follows; "that is to say,

"(1) In respect of the annual sum "paid out, &c., by payment of the "capital sum herein-after men- "tioned, to &c.:

"(2) In respect of the several annual "sums paid out of, &c. (such sums "to be ascertained on an average "of such number of years as the "Commissioners may think fit), "by payment of the capital sums "herein-after mentioned, to &c.:

"(3) In respect of the several sums "paid annually by, &c., by pay- "ment of the capital sum herein- "after mentioned, to &c.:

"(4) In respect of the annual sum "paid out of, &c., by payment of "the capital sum herein-after "mentioned, to &c.:

"(5) In respect of the annual sums "granted, &c., by payment of the "capital sum herein-after men- "tioned, to &c.:

"(6) In respect of the buildings of the "said college, by payment of a "sum :

"(7) In respect of the annual sums
"granted, &c., by payment of the
"capital sum herein-after men-
"tioned, to &c. :

"(8) In respect of the annual sum
"paid, &c., by payment of the
"capital sum herein-after men-
"tioned, to &c."

24. MODE OF STATING CASE.

Little difficulty would arise in framing Acts of Parliament if the law were, as a general rule, meant to apply universally. It is, however, usually limited to special cases, and the first duty of a draftsman is to state clearly the nature of the case to which the law applies.

Where the case is simple it should be introduced at the beginning of the section with the words "where" or "when," "in the event of" or "if," with the indicative.

The Companies Act, 1862, 25 & 26 Vict. c. 89, ss. 111, 154.

Case. "Where any company is being wound
"up,

Statutory declaration. "all books, accounts, and documents of
"the company and of the liquidators
"shall, as between the contributories of
"the company, be *primâ facie* evidence
"of the truth of all matters purporting
"to be therein recorded.

Case. "When the affairs of the company
"have been completely wound up,

Statutory declaration (1). "the court shall make an order that the

"company shall be dissolved from the
"date of such order,

Statutory declaration (2). "and the company shall be dissolved
"accordingly."

Where a single statutory declaration applies to numerous cases, it is convenient to arrange them as follows :

Statutory declaration. "A company under this Act may be "wound up by the court, as herein-after "defined, under the following circum- "stances ; (that is to say,) 25 & 26 Vict. c. 89. s. 79.

Cases. "(1) Whenever, &c.
"(2) Whenever, &c.
"(3) Whenever, &c.
"(4) Whenever, &c.
"(5) Whenever," &c.

Statutory declaration. "The expression 'the court,' as used "in this part of this Act, shall mean the "following authorities; (that is to say,) 25 & 26 Vict. c. 89. s. 81.

Cases. "In the case of a company, &c.
"In the case of a company, &c.
"In the case of a company, &c.
"In all cases of companies, &c.
"Provided that, &c."

Sometimes a statement of the cases precedes the statutory declaration :

Cases. "In the following cases ; that is to
"say,

Statutory declaration. "(1) Where, &c.

"(2) Where, &c.

"(3) Where, &c."

A useful example of a case with subordinate clauses stating alternatives and several statutory declarations is found in the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90, s. 7), as follows:

Case with subordinate clauses.

"If the master or owner of any ship, "without the license of her Majesty, "knowingly either takes on board, or "engages to take on board, or has on "board such ship within her Majesty's "dominions, any of the following per- "sons, in this Act referred to as illegally "enlisted persons; that is to say,

"(1) Any person who, &c.

"(2) Any person, being a British "subject, who, &c.

"(3) Any person who, &c.

Statutory declaration No. 1.

"Such master or owner shall be "guilty of an offence against this Act, "and the following consequences shall "ensue; that is to say,

Statutory declaration No. 2.

"(1) The offender shall be punishable "by fine and imprisonment, or either "of such punishments, at the discre- "tion of the court before which the "offender is convicted; and imprison- "ment, if awarded, may be either "with or without hard labour; and

Statutory declaration No. 3.

"(2) Such ship shall be detained until "the trial and conviction or acquittal "of the master or owner, and until "all penalties inflicted on the master "or owner have been paid, or the "master or owner has given security "for the payment of such penalties "to the satisfaction of two justices "of the peace, or other magistrate or "magistrates having the authority "of two justices of the peace; and

Statutory declaration No. 4.

"(3) All illegally enlisted persons shall "immediately on the discovery of the "offence be taken on shore, and shall "not be allowed to return to the "ship."

A case with several alternatives may be expressed as follows: Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, s. 45.

Case.

"Whenever any change takes place "in the registered ownership of any "ship, then, if such change occurs at a "time when the ship is at her port of "registry,

Statutory declaration.

"the master shall forthwith deliver the "certificate of registry to the registrar, "and he shall endorse thereon a memo- "randum of such change;

Alternative case.

"but if such change occurs during the

"absence of the ship from her port of
"registry,

Statutory declaration.

"then upon her first return to such
"port the master shall deliver the
"certificate of registry to the registrar,
"and he shall endorse thereon a like
"memorandum of the change;

Further alternative case.

"or if she previously arrives at any
"port where there is a *British* registrar,

Statutory declaration (1).

"such registrar shall, upon being ad-
"vised by the registrar of her port of
"registry of the change having taken
"place, endorse a like memorandum
"thereof on the certificate of registry,
"and may for that purpose require the
"certificate to be delivered to him, so
"that the ship be not thereby de-
"tained;

Statutory declaration (2).

"and any master who fails to deliver
"to the registrar the certificate of
"registry as herein-before required
"shall incur a penalty not exceeding
"one hundred pounds."

General rule as to expression of case.

The case must always be so expressed as to be clearly distinguishable from the other parts of the sentence; but it need not, indeed should not, where the rules of composition require a different arrangement, be comprised in a consecutive sentence. A separation of the members of a case is

almost always desirable where it consists partly of the statement of a fact and partly of an act to be done. This will appear from the following example, in which the case is shown in italics, the statutory declaration in ordinary type.

Irish Church Act, 1869, 32 & 33 Vict. c. 42, s. 25, sub-s. 3.

"*Where any church was in use at the time of* "*the passing of this Act, and no application in* "*respect thereof is made by the said representative* "*body of the said church within the said pre-* "*scribed period, and such church was erected at* "*the private expense of any person,* the Commis- "sioners shall, *on the application of the person* "*who erected such church, if alive, or of his* "*representatives if he died since the year one* "*thousand eight hundred,* by order vest such "church in the applicant or applicants, or in such "person or persons as he or they may direct."

25. MODE OF STATING CONDITIONS.

The law frequently confers a benefit or imposes an obligation on certain conditions; a condition is aptly introduced by "If, &c.," or (where it follows a negative sentence) by "unless" or "until."

Case. "Where any person is convicted of "an offence

Condition. "if he has given notice at the prescribed "time and in the prescribed manner

Statutory declaration. "he may appeal from such conviction, "&c."

32 & 33 Vict. c. 42, s. 34.

Where the conditions are numerous it is best (as has been before remarked with respect to the

case) to state them in separate subordinate sentences.

Statutory declaration.

"The Commissioners may at any "time after the first of January one "thousand eight hundred and seventy-"one sell by public auction or private "contract, or otherwise convert into "money, any real or personal property "vested in them by this Act,

Conditions.

"subject to the other provisions of this "Act, and to the following conditions:

"(1) They shall not sell, &c.

"(2) Perpetuity rents shall, &c.

"(3) The price of the rights to mines "or quarries shall, &c.

"(4) They shall not sell to the "public, &c.

"(5) They shall not sell to the "public, &c.

"(6) Notice shall be given to, &c.

"(7) An owner shall be deemed, "&c."

Case.

"Where any person is authorised by "any Act of Parliament passed after "the commencement of this Act to "appeal from the decision of a court of "summary jurisdiction to a court of "general or quarter sessions, he may

Statutory declaration.

"appeal to such court,

"subject to the conditions and regula-
"lations following:

Condition 1. "(1) The appeal shall be made, &c.

Condition 2. "(2) The appellant shall, &c.

Condition 3. "(3) The appellant shall, &c.

Condition 4. "(4) Where the appellant, &c.

Condition 5. "(5) The court of appeal, &c.

Condition 6. "(6) Whenever a decision, &c.

Condition 7. "(7) Every notice, &c."

Another mode of stating the conditions in the last-mentioned example would be to substitute for the words "subject to the conditions and regula-"tions following" the words "but no appeal shall "be entertained *unless* the following conditions "and regulations have been complied with." The greatest caution must, however, be used in putting a sentence in a negative form, as it makes the performance of the conditions a matter of absolute necessity, and the omission of the smallest portion of them will render the appeal altogether nugatory. On the other hand, if the affirmative expression only be used, the court will consider the enactment as to the conditions directory, and dispense with them on due cause being shown for their omission.

An example of very complicated cases with a condition, attached to the later but not to the earlier statutory declaration, may be found in the 38 & 39 Vict. c. 36.

Artisans and Labourers Dwellings Improvement Act, 1875, sect. 3.

26. Mode of stating exceptions.

The word "except" may generally be used in introducing exceptions, but care must be taken to avoid its use where it is likely to lead to ambiguity. This is illustrated by the fourteenth section of the Irish Church Bill as brought in. That section was as follows:

> "The Commissioners shall, as soon as "may be after the passing of this Act, "ascertain and declare by order the "amount of yearly income of which the "holder of any archbishopric, bishopric, "benefice, or cathedral preferment in "or connected with the said Church "will be deprived by virtue of this Act, "after deducting all rates and taxes, "*except income or property tax, salaries* "*of permanent curates employed as* "*herein-after mentioned, payments to* "*diocesan schoolmasters, and other out-* "*goings to which such holder is liable* "*by law.*"

In the above example it will be perceived that it was intended only to except income or property tax, but as the sentence is worded it may reasonably be argued that all the substantives that follow the word "except" are excepted. The sentence should run as follows:

"After deducting all rates and taxes,
"salaries to permanent curates em-
"ployed as herein-after mentioned, pay-
"ments to diocesan schoolmasters, and
"other outgoings to which such holder
"is liable by law, but not deducting
"income or property tax."

Where exceptions are numerous they should (as in the instances of numerous cases and numerous conditions) be placed in separate members of the section or even in a separate section. Where the enumeration of the exception is short, compared with the enumeration of the particulars not excepted, it is often convenient to state the exceptions first. Illustrations of this may be found in the fifteenth and thirty-first sections of the Bankruptcy Act, 1869. 32 & 33 Vict. c. 71.

"The property of the bankrupt s. 15.
"divisible amongst his creditors, and in
"this Act referred to as the property
"of the bankrupt, shall not comprise
"the following particulars:

Exception 1. "(1) Property held by the bankrupt
"on trust for any other person:

Exception 2. "(2) The tools (if any) of his trade,
"and the necessary wearing
"apparel and bedding of him-
"self, his wife and children, to

"a value, inclusive of tools and "apparel and bedding, not ex- "ceeding twenty pounds in the "whole:"

But it shall comprise the following particulars:

General enumeration.

"(3) All such property as may be- "long to or be vested in the "bankrupt at the commence- "ment of the bankruptcy, or "may be acquired by or devolve "on him during its continuance:

"(4) The capacity to exercise and "take proceedings for exercising "all such powers in or over or "in respect of property as might "have been exercised by the "bankrupt for his own benefit "at the commencement of his "bankruptcy or during its con- "tinuance, except the right of "nomination to a vacant eccle- "siastical benefice:

"(5) All goods and chattels being, "at the commencement of the "bankruptcy, in the possession, "order, or disposition of the "bankrupt, being a trader, by "the consent and permission of "the true owner, of which goods

"and chattels the bankrupt is
"reputed owner, or of which he
"has taken upon himself the
"sale or disposition as owner;
"provided that things in action,
"other than debts due to him
"in the course of his trade or
"business, shall not be deemed
"goods and chattels within the
"meaning of this clause."

Further exceptions.

"Demands in the nature of unliqui- 32 & 33 Vict. c. 71, s. 31.
"dated damages arising otherwise than
"by reason of a contract or promise
"shall not be provable in bankruptcy,
"and no person having notice of any
"act of bankruptcy available for ad-
"judication against the bankrupt shall
"prove for any debt or liability con-
"tracted by the bankrupt subsequently
"to the date of his so having notice.

Further enumeration.

"Save as aforesaid, all debts and
"liabilities, present or future, certain
"or contingent, to which the bankrupt
"is subject at the date of the order of
"adjudication, or to which he may
"become subject during the continu-
"ance of the bankruptcy by reason of
"any obligation incurred previously to
"the date of the order of adjudication,

"shall be deemed to be debts provable "in bankruptcy, and may be proved in "the prescribed manner before the "trustee in the bankruptcy."

32 & 33 Vict. c. 62, s. 4.

On the other hand, in the Debtors Act, 1869, sect. 4, the exceptions being numerous are placed at the end of the section :

Statutory declaration.

"No person shall, after the com- "mencement of this Act, be arrested "or imprisoned for making default in "payment of a sum of money.

"There shall be excepted from the "operation of the above enactment :

Exception 1. "(1) Default, &c.

Exception 2. "(2) Default, &c.

Exception 3. "(3) Default, &c.

Exception 4. "(4) Default, &c.

Exception 5. "(5) Default, &c.

Exception 6. "(6) Default, &c."

27. USE OF PROVISOES.

Provisoes should never be used to define the case or the condition or the legal subject; their proper function is to make a special exemption from a general statutory declaration, and they should be exclusively confined to that function. The rules with respect to the grouping of conditions and exceptions apply to provisoes also where they are numerous.

28. SUMMARY OF RULES.

To give a short summary of what has been stated. The draftsman should recollect that an

enactment, in its most complicated form, is made up of the following parts :

(1) The case ;
(2) The statutory declaration ;
(3) The conditions ;
(4) The exceptions ;
(5) The provisoes.

The arrangement of these parts must much depend on the judgment of the draftsman ; the only general rule to be observed is that each part should in substance be clearly distinguishable, and should be comprised, as far as possible, in a short sentence or sentences.*

29. SELECTION OF WORDS AND OTHER MATTERS.

It may be well to give a few miscellaneous suggestions with respect to the selection of words and structure of sentences.

In the selection of words, Latin words and, where possible without a sacrifice of accuracy, technical phraseology should be avoided ; the word best adapted to express a thought in ordinary composition will generally be found to be the best that can be used in an Act of Parliament.

The use of technical phraseology may be admitted in an Act relating to contingent remainders, but should in the case of an Agricul-

* Where the circumstances under which an enactment is to take effect are complicated there is no practical difference, except in form, between the statement of the subordinate propositions of the case and conditions, and the draftsman must use his discretion in using one or the other form as he deems most advisable.

tural Holdings Act or Highway Act be excluded from the body of the Act, and if required to be introduced for the purpose of securing legal precision, appear only in the interpretation clause explaining, extending, or limiting words in ordinary use, such as "Agricultural Holding," "Highway," and so forth. Law is made for man, and not man for law; and it is too often forgotten by lawyers and draftsmen that the greater number of Acts of Parliament contain rules of conduct to be observed by illiterate persons, and to be enforced by authorities unacquainted with the technical language of Coke and the year books.

A draftsman should pay attention to collecting and arranging for his own use any relative terms, such as "mortgage, mortgagor, mortgagee," "comply, compliance," "require, requisition;" and exhaustive forms of expression, such as "all "property, real and personal, including all interests "and rights in to or out of property," "rights, "duties, liabilities, capacities and incapacities," "acts, neglects, defaults."

The miscellaneous remarks following may be useful:

Nouns should be used in preference to pronouns, even though the noun has to be repeated. Repetition of the same word is never a fault in business composition, if an ambiguity is thereby avoided.

An Act of Parliament should be deemed to be always speaking, and therefore the present or past tense should be adopted, and "shall" should be used as an *imperative* only, and not as a *future*. "If" should be followed by the indicative where it suggests a case; for example, "If "any person commits, &c., he shall be punished as follows."

Where there is an enumeration of several persons or things, followed by an enactment intended to apply to all and each of them, care must be taken to make this enactment apply both generally and distributively. For instance, "A., B., "C., and D., or any of them may, &c.," or "any "one or more of the following persons may."

It must be recollected that "other" following an enumeration of various particulars is always construed to mean other things of the like description as those before enumerated, unless the construction be negatived by the introduction of words such as "whether of the same kind as, &c., "or not."

Numbers should be written at full length; thus sections of an Act should be cited as "section "two," &c. The titles, as well as the year and chapter of Acts should, for the sake of accuracy, be given, and where an Act is cited by its short title a reference should always be made in the margin to its session and chapter.

Lastly, the same thing should invariably be said in the same words.

30. Recommendation of use of generic terms.

It will often be found that it is absolutely essential to shorten a sentence by giving a generic name to several particulars. Take, for example, the Inclosure Act, 1876, 39 & 40 Vict. c. 56. It was desirable that the Commissioners should not make a provisional order for the inclosure of a common until they had satisfied themselves that the inclosure would be for the benefit not only of the public in general but of the inhabitants of the neighbourhood. In order to simplify the language of the Act the generic terms "benefit of the "neighbourhood and private interests" were used to cover the following subjects, "the health, com- "fort and convenience of the inhabitants of any "cities, towns and villages or populous places in "or near any parish in which the land proposed "to be inclosed, or any part thereof, may be "situate (hereinafter included under the expres- "sion 'the benefit of the neighbourhood'), as to the "advantage of the persons interested in the "common to which such application relates (herein- "after included under the expression 'private "'interests')."

Again, in Bills respecting various local areas a system was adopted of grouping the areas and the spending authorities under the term local areas and local authorities, setting forth in a

schedule the separate names of the areas and authorities.

Not unfrequently a difficulty may be avoided by nicknaming, as it were, a particular person or body of persons, so as to comprise in one word what would otherwise make a complicated sentence. Take for an example the sixty-sixth section of the Prison Act, 1865. The section is as follows :

28 & 29 Vict. c. 126, s. 66.

"Where a prison authority, in this "section called *the contracting authority*, "has contracted with any other prison "authority, in this section called *the* "*receiving authority*, that *the receiving* "*authority* is to receive into and main- "tain in its prison any prisoners main- "tainable at the expense of *the con-* "*tracting authority*, the prison of *the* "*receiving authority* shall for all the "purposes of and incidental to the com- "mitment, trial, detention, and punish- "ment of the prisoners of *the contract-* "*ing authority*, or any of such pur- "poses, according to the tenor of the "contract, be deemed to be the prison "of *the contracting authority*, except "that the contracting authority shall "have no right to interfere in the "management of the prison of the "*receiving authority*."

A little consideration will show that if the words "contracting authority," "receiving authority," were not adopted, the sentence would be overloaded with words to such an extent as to be unintelligible. In short, whenever a draftsman finds his sentence becoming confused, although he has duly observed the directions as to the statement of the case, the conditions, and so forth, he may be certain that some part of it wants to be separated from the rest, and to be dealt with as a separate paragraph at the end of the section, or even as a separate section. The framer of the Volunteer Act, 1869, obviously saw the difficulty of stating in section three the mode in which the demand was to be made; as it comprised so many particulars, that it would, if introduced into the beginning of that section, have inconveniently separated the several members of the case. Accordingly he lightened section three by inserting in that section the words "on demand made as "herein-after mentioned," and placed the particulars of the demand in section four.

32 & 33 Vict. c. 81.

A similar course was adopted in "The Artisans and Labourers Dwellings Improvement Act, 1875." On referring to the Act it will be found that the action of the local authority under section three is to take place "when an official repre-"sentation as herein-after mentioned" is made as to the unhealthiness of the area, and so forth.

38 & 39 Vict. c. 36.

The nature of the official representation referred to in section three is stated in section four.

A reference to the Act will show that if section four had formed part of section three the case would have been so overcrowded with words as to be absolutely unintelligible.

A form of section that deserves to be considered by a draftsman, as an example of the advantage to be derived from getting a generic term to express and include a number of special predicates, is the following section of the Merchant Shipping Act, 1854. 17 & 18 Vict. c. 104, s. 346.

> "Every pilot boat or ship shall be
> "distinguished by the following *charac-*
> "*teristics;* (that is to say,)
>
> "(1) A black colour painted or tarred
> "outside, &c. :
>
> "(2) On her stern the name of the
> "owner thereof and the port to
> "which she belongs painted in
> "white letters, and on each
> "bow the number of the licence
> "of such boat or ship :
>
> "(3) When afloat, a flag at the mast-
> "head or on a sprit, or staff,
> "&c."
>
> "And it shall be the duty of the master
> "of such boat or ship to attend to the
> "following *particulars:* First, that the

"boat or ship possesses all the above "*characteristics*; secondly, that the "aforesaid flag is kept clean and dis- "tinct, so as to be easily discerned at a "proper distance; and lastly, that the "names and numbers before mentioned "are not at any time concealed; and if "default is made in any of the above "particulars he shall incur a penalty "not exceeding twenty pounds for each "default."

The generic term *characteristics* prevents the necessity for a repetition of the sub-sections 1, 2, and 3. Similarly the declaration that "it shall "be the duty of the master to attend to the "following particulars," and the infliction of the penalty on default being made "in any of the "above particulars" makes the master liable, first, for a general default in the boat not possessing the characteristics required; and, secondly, for a special default in not attending to the flag being kept clean, and so forth.

Section 48 of the same Act illustrates the advantage of the use of the word "event" where a set of circumstances have to be repeated:

17 & 18 Vict. c. 104, s. 48.

"*In the event* of the certificate of re- "gistry of any ship being mislaid, lost, "or destroyed, if such *event* occurs at "any port of the United Kingdom, &c.,

"then the registrar of her port of registry
"shall grant a new certificate of registry
"in lieu of and as a substitute for her
"original certificate of registry; but if
"such *event* occurs elsewhere, the master
"or some other person having knowledge
"of the circumstances shall make a de-
"claration, &c.; and the registrar shall
"thereupon grant a provisional cer-
"tificate, &c."

If the word "event" were not used it would require a constant repetition of the words "cer- "tificate of registry of any ship being mislaid, "lost, or destroyed."

31. ENUMERATION OF PARTICULARS.

As to Enumeration of Particulars.—In framing an Act intended to include a great number of particulars, no attempt should be made to enumerate the particulars, but a generic term should be used dealing exhaustively with the subject-matter of the Act. Those particulars only should be enumerated which are intended to be excepted from the Act; for example, the Succession Duty Act is framed with a view of including every disposition or devolution of property at death that is not subject to the Legacy Duty Acts. It was impossible to make any exhaustive enumeration of the particulars of the property to be included in the Act. The course, therefore, was adopted of

including in the Act every possible disposition or devolution of property on death, and then to exempt from the operation of the Act any acquisition of property in respect of which duty was payable under the Legacy Duty Acts.

The most frequent cause of ambiguity in Acts of Parliament is the want of an adjectival inflexion. For example, the expression "Every "factory and every workshop subject to this Act," raises the question whether "subject to this Act" applies to both or to the last only of the nouns. If it is intended to apply to the last only, the ambiguity is avoided by placing the qualified noun before the unqualified, that is to say, by reading the sentence "Every workshop subject to this Act "and every factory." To make the qualification certainly apply to both the form of sentence must be altered somewhat in this way, "Where a factory "and a workshop are subject to this Act they "shall," &c.

The same difficulty arises in the case of the relative, *e.g.*, "In a factory or workshop in which "young children are employed," is an expression subject to the same ambiguity, which can only be avoided by adopting a similar rule to that recommended above, or else by repeating the antecedent, and reading the sentence, "Every factory and "workshop in which factory and workshop young "children are employed."

Illustrations might be multiplied indefinitely. The draftsman cannot do better than read carefully Mr. Coode's book on legislative expression, before referred to, and might also study, for forms of expression, the Code of Criminal Procedure and Civil Procedure of the State of New York, and the General Rules of the Court of Chancery of the 8th May 1845. He should analyse the arrangement of Acts, and pick to pieces sentences which appear to him to be well drawn. As a model of clearness of expression no better example can be found than Paley's work on Moral Philosophy. A book which will well repay a careful perusal by a draftsman, indeed by every writer of business compositions, is "Errors in the Use of English," by William R. Hodgson, LL.D., Edinburgh, David Douglas, 1882.

CHAPTER IV.

GENERAL OBSERVATIONS.

THE object of this chapter is to explain certain formal parts and groups of sections constantly recurring in Acts of Parliament.

32. PREAMBLE.

As to Preambles.—The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood; for example, the Courts of Justice Building Act, 1865, proposes to apply certain funds to the payment of the expenses of constructing new courts of justice. Accordingly a long preamble is prefixed to the Act, explaining the origin of those funds; for without such a preamble it would have been impossible for Parliament to have understood the subject-matter of the Act. Preambles are also not unfrequently required in amending Acts for the purpose of showing the exact bearing of the amendments on the principal Act.

28 & 39 Vict. c. 48.

A preamble may also be used to limit the scope of certain expressions in an Act; for example, in

dealing with the subject of licensing public-houses, it may be convenient in the preamble to define as licensing Acts the Acts relating to the sale of intoxicating liquors.

Sometimes a preamble is inserted for political reasons when the object of an Act is popular, and admits of being stated in a telling sentence or sentences.

Other cases will occur in practice, in which a preamble will be found convenient to explain a fact or introduce a definition; but it is not as a general rule advisable to enunciate the principle of an Act in a preamble, as the opponents of the Act are sure to select it as a battle-ground instead of dividing on the actual provisions of the Act.

As to Short Title of Act.—Every Act should have a short title, ending with the date of the year in which it is passed. 33. SHORT TITLE OF ACT.

As to Extent of Act.—Where an Act is intended to operate within the territorial limits of the United Kingdom but not beyond, there is no necessity for a section declaring the extent of the Act. The most frequent use of such a section is to restrict the Act to England by declaring that it shall not extend to Scotland or Ireland. Sometimes, however, an affirmative extension is required, declaring that it is to extend to the 34. EXTENT OF ACT.

Channel Islands, the Colonies, her Majesty's dominions in India, and so forth.

Wales and Berwick-upon-Tweed are included in England by the Act of 20 Geo. II. c. 42, and ought not therefore to be specially mentioned. The phrase that an Act shall apply to "England "only" is not advisable, as it would seem to exclude by inference the inclusion in England of Wales and Berwick-upon-Tweed established by the above mentioned Act of 20 Geo. II.

35. Commencement of Act.

As to Commencement of Act.—At common law every Act of Parliament commences from the first day of the session in which it is passed. The injustice arising from such a rule was obviated by 33 Geo. III. c. 13, which enacts that the Clerk of the Parliaments shall endorse after the title of the Act the date, month, and year when the same is passed and receives the Royal Assent, and that such endorsement shall be taken to be part of such Act, and to be the date of its commencement where no other commencement is therein provided. Even thus, great inconvenience arises from bringing a complicated Act into operation immediately on the date of its passing, and it is almost always advisable to postpone its operation for some little time, in order at all events that the public may become acquainted with its provisions. The 1st of January ensuing the passing of the Act is the

most natural day for bringing it into operation, when there are no special reasons to be adduced in favour of another day. If, however, the Act commences at a future period there should usually be inserted a provision giving immediate effect to any rules, appointments of officers, or other machinery required to bring the Act duly into operation at the date of its commencement.

As to Construction of Act.—The interpretation clause should be preceded by a qualifying introductory clause, such as "In this Act, unless the "context otherwise requires." In framing definitions and other subsidiary clauses regard should be had to the Interpretation Act, 1889, which is set out in the appendix, and which must be learnt by heart by the draftsman. Definitions require to be carefully considered, as a misuse of them is a frequent cause of ambiguity. It should be recollected that a word once defined preserves its meaning throughout the whole Act—a truism frequently overlooked in practice. A word should never be defined to mean something which it does not properly include, *e.g.*, "piracy" ought not to be defined to include "mutiny," and so forth. The fewer the definitions the better, and as a general rule, the draftsman should endeavour to draw his Act without definitions, and insert them only when he finds that they are absolutely necessary.

36. INTERPRETATION OF TERMS.

52 & 53 Vict. c. 63.

The proper use of definitions is to include or exclude something with respect to the inclusion or exclusion of which there is a doubt without such a definition, and no attempt should be made to make a pretence of scientific precision by defining words of which the ordinary meaning is sufficiently clear and exact for the purpose of the Act in which they are used.

37. As to place in Act of definitions and certain other preliminary matters.

As to all above-mentioned Sections.—The above-mentioned sections must be placed either at the beginning or the end of the Act. Logically, their proper place is the beginning of the Act, as the reader cannot understand the Act till he is master of the definitions or explanations of the terms used in the Act. Politically, their proper place is at the end of the Act, as a definition frequently narrows or widens the whole scope of an Act, and Parliament cannot possibly judge whether such narrowing or widening is or is not expedient till they are acquainted with the Act itself, *e.g.*, in the Contagious Diseases (Animals) Act, 1869, the definition, as it is called, of local authorities in the schedule determines the persons by whom, the places in which, and the funds out of which, the whole Act is to be carried into operation. This logical and political antagonism of arrangement might easily be reconciled were it the custom of Parliament to postpone the above sections in

32 & 33 Vict. c. 70, sch. 2.

the same way as they postpone the preamble till the Bill has been gone through. Such a postponement, however, would, in a hardly fought Bill, give rise to a division. The draftsman, therefore, is recommended as a general rule to adhere to the political and not to the logical rule, and to place the sections in question at the end of the Act.

As to Adjustment of Existing and New Law.— One of the most responsible duties of a draftsman is to provide for the adjustment of the provisions of the new Act which he is drawing, and the former law. 38. ADJUSTMENT OF EXISTING AND NEW LAW.

Take a very simple case, the New Forest Act, 1877. The instructions to the draftsman would be to amend the constitution of the Court of Verderers by increasing the number of verderers to seven, one of whom should be nominated by the Crown, and the others be elected, the elective verderers to be chosen by the Parliamentary electors of the parishes and townships within the confines of the Forest, and by the commoners. The principles of this instruction are carried into effect by sects. 14–23, defining the constitution of the verderers, the qualification of the electors, the time at which the verderers come into office and their legal status. The details of their election are contained in Schedules 2 and 3, providing for 40 & 41 Vict. c. cxxi. (local).

a register of commoners and the mode of election of the verderers.

An examination of these clauses will show the necessity for the draftsman filling in the details of an instruction by sections which, though in one sense formal, in another require to be settled with great consideration. The draftsman must carefully look forward and see that the new body will be brought into action at the time fixed for the determination of the old body, and that there is no hiatus between the old and the new administration.

Frequently, however, more complicated cases arise in which provisions have to be inserted for abolishing an old authority and constituting a new one. Take, for example, the Supreme Court of Judicature Act, 1873, in which the greater portion of the Act is occupied in the transfer of jurisdiction of the existing courts and the existing officers, and the declaration of the status of the existing officers when so transferred.

36 & 37 Vict. c. 65.

39. Exemptions and savings.

Where a new law is laid down establishing penalties on new manufactures, or bringing established manufactures within the jurisdiction of an administrative body, a separate heading of exemptions and savings will usually be required. An illustration of this necessity will be found in the Explosives Act, 1875. These sections provide, amongst other things, for the exemption of

38 & 39 Vict. c. 17. ss. 97–103.

Government factories, for cases of emergency in which a master of a ship or carrier transgresses the law by stress of weather or inevitable accident, and further, reserves in sects. 102–103, the common law liabilities in respect of nuisances and the powers of local Acts. Provisions such as these must always be kept in mind by the draftsman, and should be inserted by him when necessary without special instructions.

The section which most frequently raises the question of savings, is that of the repeal of Acts. As a general rule, when Acts are repealed, existing appointments and existing rights or privileges are maintained, and offences committed under the old Acts are punished in pursuance of the old provisions. Frequently, however, the draftsman will have to deviate from the above-mentioned rule. He will be required to abolish the old officers instead of retaining them, or to declare that the procedure of the new Acts is to be substituted in relation to the punishment of offences committed before the Act for the procedure under the old Acts and so forth. In short, he must be prepared to reconcile the provisions of the old and the new law by the insertion of such provisions as his legal knowledge will show him to be necessary for the proper working of the law.

The difficulty of settling the repeal clause of an Act is enhanced rather than diminished by the

enactment of section 38 of the Interpretation Act, 1889. That section, which is copied from the statutory forms framed for the use of the Parliamentary Counsel's office, makes provision for the usual incidents attending a repeal, but at the same time if the proposed Act is intended to affect existing rights or interests which are excluded by the Interpretation Act, care must be taken to say that such portion of the Interpretation Act as contains such exclusions shall not apply.

It may be well to suggest here a provision which is often forgotten, viz., that in drawing a temporary Act which is to expire on a given day, and which imposes penalties or creates obligations, care must be taken to provide that offences committed and obligations incurred before the day appointed for its expiration may be punished or enforced after that day, or else the law will, in a great degree, fail of its purpose.

40. SCHEDULES.

As to Schedules.—Great care should be taken in the preparation of schedules. It is desirable to include in a schedule matters of detail; it is improper to put in a schedule matters of principle. The drawing the proper line of demarcation between the two classes of matters is often difficult. All that can be said is that nothing should be placed in a schedule to which the attention of Parliament should be particularly directed; for

example, the *constitution* of an electoral or financial body of persons should be found in the body of the Act; but the mode of conducting the election of the electoral body, and the rules as to proceedings at meetings of the financial body, may not improperly be placed in a schedule.

41. ALTERATIONS DURING PASSAGE OF ACT.

As to Alterations.—Great care must be taken in noticing any consequential alterations that may be required in consequence of amendments made in the passage of an Act through Parliament. For example, a schedule is taken out, and nothing is more common than to find that the omission is noticed in one section, but the number of the schedules is forgotten to be altered in another section, and hence the schedules are misnumbered, and most important sections may fail of effect.

With a view to obviate this difficulty the draftsman should note in the margin of each schedule the sections in which it is mentioned, and should refer to that note in the event of an alteration being made in any of such sections.

Similarly with respect to dates; the alteration of a date in one section not unfrequently necessitates the alteration of a date in another. This is forgotten in the haste of passing the Act through committee, and unless the alteration is attended to by the draftsman, the Act fails of effect in some material provision.

APPENDIX.

THE INTERPRETATION ACT, 1889.

[52 & 53 Vict. c. 63.]

ARRANGEMENT OF SECTIONS.

Re-enactment of existing Rules.

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2. Application of penal Acts to bodies corporate.
3. Meanings of certain words in Acts since 1850.
4. Meaning of "county" in past Acts.
5. „ "parish."
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7. „ "sheriff clerk," &c., in Scotch Acts.
8. Sections to be substantive enactments.
9. Acts to be Public Acts.
10. Amendment or repeal of Acts in same session.
11. Effect of repeal in Acts passed since 1850.

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12. Official definitions in past and future Acts.
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14. Meaning of "rules of court."
15. „ borough.
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17. Definitions relating to elections.
18. Geographical and Colonial definitions in future Acts.
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22. ,, "financial year" in future Acts.
23. Definition of Lands Clauses Acts.
24. Meaning of "Irish Valuation Acts."
25. ,, "ordnance map."
26. ,, service by post.
27. ,, "committed for trial."
28. Meanings of "sheriff," "felony," and "misdemeanour," in future Scotch Acts.
29. Meaning of "county court" in future Irish Acts.
30. References to the Crown.
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34. Measurement of distances.
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37. Exercise of statutory powers between passing and commencement of Act.
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CHAPTER 63.

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. A.D. 1889.

[30th August 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Re-enactment of existing Rules.

Rules as to gender and number.

1.—(1) In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears—

(*a*) words importing the masculine gender shall include females ; and

(*b*) words in the singular shall include the plural, and words in the plural shall include the singular.

(2) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary

conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

Application of penal Acts to bodies corporate.

2.—(1) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate.

(2) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of certain words in Acts since 1850.

3. In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely—

The expression "month" shall mean calendar month:

The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure:

The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear"

shall, in the like case, include affirm and declare.

Meaning of "county" in past Acts.

4. In every Act passed after the year one thousand eight hundred and fifty and before the commencement of this Act the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town.

Meaning of "parish."

5. In every Act passed after the year one thousand eight hundred and sixty-six, whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

Meaning of "county court."

6. In this Act, and in every Act and Order of Council passed or made after the year one thousand eight hundred and forty-six, whether before or after the commencement of this Act, the expression "county court" shall, unless the contrary intention appears, mean as respects England and Wales a court under the County Courts Act, 1888. 51 & 52 Vict. c. 43.

Meaning of "sheriff clerk," &c. in Scotch Acts.

7. In every Act relating to Scotland, whether passed before or after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff clerk" shall include steward clerk;

The expressions "shire," "sheriffdom," and "county" shall include any stewartry in Scotland.

Sections to be substantive enactments.

8. Every section of an Act shall have effect as a substantive enactment without introductory words.

Acts to be public Acts.

9. Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

Amendment or repeal of Acts in same session.

10. Any Act may be altered, amended, or repealed in the same session of Parliament.

Effect of repeal in Acts passed since 1850.

11.—(1) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

Official definitions in past and future Acts.

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the

contrary intention appears, have the meanings hereby respectively assigned to them, namely:

(1) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

(2) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of her Majesty's Treasury.

(3) The expression "Secretary of State" shall mean one of her Majesty's Principal Secretaries of State for the time being.

(4) The expression "the Admiralty" shall mean the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.

(5) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and others for the time being of her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

(6) The expression "the Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education.

(7) The expression "the Scotch Education Department" shall mean the Lords of the Committee

for the time being of the Privy Council appointed for Education in Scotland.

(8) The expression "the Board of Trade" shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

(9) The expression "Lord Lieutenant," when used with reference to Ireland, shall mean the Lord Lieutenant of Ireland or other Chief Governors or Governor of Ireland for the time being.

(10) The expression "Chief Secretary," when used with reference to Ireland, shall mean the Chief Secretary to the Lord Lieutenant for the time being.

(11) The expression "Postmaster General" shall mean her Majesty's Postmaster General for the time being.

(12) The expression "Commissioners of Woods" or "Commissioners of Woods and Forests" shall mean the Commissioners of her Majesty's Woods, Forests, and Land Revenues for the time being.

(13) The expression "Commissioners of Works" shall mean the Commissioners of her Majesty's Works and Public Buildings for the time being.

(14) The expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.

(15) The expression "Ecclesiastical Commissioners" shall mean the Ecclesiastical Commissioners for England for the time being.

(16) The expression "Queen Anne's Bounty"

shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

(17) The expression "National Debt Commissioners" shall mean the Commissioners for the time being for the Reduction of the National Debt.

(18) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

(19) The expression "the Bank of Ireland" shall mean, as circumstances require, the Governor and Company of the Bank of Ireland, or the bank of the Governor and Company of the Bank of Ireland.

(20) The expression "consular officer" shall include consul-general, consul, vice-consul, consular agent, and any person for the time authorised to discharge the duties of consul-general, consul, or vice-consul.

Judicial definitions in past and future Acts.

13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:

(1) The expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

(2) The expression "Court of Appeal," when used with reference to England or Ireland, shall mean her Majesty's Court of Appeal in England or Ireland, as the case may be.

(3) The expression "High Court," when used with reference to England or Ireland, shall mean her Majesty's High Court of Justice in England or Ireland, as the case may be.

(4) The expression "court of assize" shall, as respect England, Wales, and Ireland, mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.

(5) The expression "assizes," as respects England, Wales, and Ireland, shall mean the courts of assize usually held in every year, and shall include the sessions of the Central Criminal Court, but shall not include any court of assize held by virtue of any special commission, or, as respects Ireland, any court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877.

40 & 41 Vict. c. 57.

(6) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties "of justices of the peace out of sessions within "England and Wales with respect to summary "convictions and orders."

(7) The expression "the Summary Jurisdiction (England) Acts" and the expression "the

Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them. 11 & 12 Vict. c. 43. 42 & 43 Vict. c. 49.

(8) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them. 27 & 28 Vict. c. 53. 44 & 45 Vict. c. 33.

(9) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same. 14 & 15 Vict. c. 93.

(10) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.

(11) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act,

or by virtue of his commission, or under the common law.

(12) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

(13) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

(14) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any

county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

Meaning of "rules of court."

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "rules of court" when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of court.

Meaning of "borough."

15. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :

(1) The expression "municipal borough" shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities or property of the council of a

45 & 46 Vict. c. 50.

borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council.

(2) The expression "municipal borough" shall mean, as respects Ireland, any place for the time being subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of municipal corporations in Ireland."

(3) The expression "parliamentary borough" shall mean any borough, burgh, place or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

(4) The expression "borough" when used in relation to local government shall mean a municipal borough as above defined, and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined.

Meaning of "guardians" and "union."

16. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:

(1) The expression "board of guardians" shall, as respects England and Wales, mean a board of guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same,

4 & 5 Will. IV. c. 76.

and shall include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834.

(2) The expression "poor law union" shall, as respects England and Wales, mean any parish or union of parishes for which there is a separate board of guardians.

(3) The expression "board of guardians" shall, as respects Ireland, mean a board of guardians elected under the Act of the Session of the first and second years of the reign of her present Majesty, chapter fifty-six, intituled "An Act for the more effectual relief of the destitute poor in Ireland," and the Acts amending the same, and shall include any body of persons appointed by the Local Government Board for Ireland to carry into execution the provisions of those Acts.

(4) The expression "poor law union" shall, as respects Ireland, mean any townland or place or union, or townlands or places, for which there is a separate board of guardians.

Definitions relating to elections.

17. In every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:

(1) The expression "parliamentary election" shall mean the election of a member or members to serve in Parliament for a county or division of a county, or parliamentary borough or division of

a parliamentary borough, or for a university or combination of universities.

(2) The expression "parliamentary register of electors" shall mean a register of persons entitled to vote at any parliamentary election.

(3) The expression "local government register of electors" shall mean as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll.

Geographical and colonial definitions in future Acts.

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:

(1) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

(2) The expression "British possession" shall mean any part of her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

(3) The expression "colony" shall mean any part of her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central

legislature shall, for the purposes of this definition, be deemed to be one colony.

(4) The expression "British India" shall mean all territories and places within her Majesty's dominions which are for the time being governed by her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

(5) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.

(6) The expression "Governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the government of that possession.

(7) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of "statutory declaration" in past and future Acts.

5 & 6 Will. IV. c. 62.

21. In this Act, and in every other Act, whether passed before or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

Meaning of "financial year" in future Acts.

22. In this Act and in every Act passed after the commencement of this Act the expression "financial year" shall, unless the contrary intention appears, mean as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending the thirty-first day of March.

Definition of Lands Clauses Acts.

23. In any Act passed after the commencement of this Act, unless the contrary intention appears—

The expression "Lands Clauses Acts" shall mean—

8 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
32 & 33 Vict. c. 18.
46 & 47 Vict. c. 15.

(*a*) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act,

1883, and any Acts for the time being in force amending the same; and

(*b*) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and 8 & 9 Vict. c. 19. 23 & 24 Vict. c. 106.

(*c*) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same. 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 97. 14 & 15 Vict. c. 70. 27 & 28 Vict. c. 71. 31 & 32 Vict. c. 70.

Meaning of Irish Valuation Acts.

24. In any Act passed before or after the commencement of this Act the expression "Irish Valuation Acts" shall mean the Acts relating to the valuation of rateable property in Ireland.

Meaning of "ordnance map."

25. In this Act and in every other Act, whether passed before or after the commencement of this Act, the expression "ordnance map" shall, unless the contrary intention appears, mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841 to 1870, or by the Survey (Ireland) Acts, 1825 to 1870, and the Acts amending the same respectively.

Meaning of "service by post."

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or

"send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of "committed for trial."

27. In every Act passed after the commencement of this Act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognisance to appear and take his trial before a judge and jury.

11 & 12 Vict. c. 42.

Meanings of "sheriff," "felony," and "misdemeanour" in future Scotch Acts.

28. In this Act and in every Act passed after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:

The expression "felony" shall, as respects Scotland, mean a high crime and offence:

The expression "misdemeanour" shall, as respects Scotland, mean an offence.

29. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877. Meaning of "county court" in future Irish Acts. 40 & 41 Vict. c. 56.

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown. References to the Crown.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or by-laws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power. Construction of statutory rules, &c.

32.—(1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires. Construction of provisions as to exercise of powers and duties.

(2) Where an Act passed after the commence-

ment of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or by-laws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or by-laws.

Provisions as to offences under two or more laws.

33. Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Measurement of distances.

34. In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Citation of Acts.

35.—(1) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the

regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

(2) Where any Act passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of her Majesty's Stationery Office.

(3) In any Act passed after the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

"Commencement."

36.—(1) In this Act, and in every Act passed either before or after the commencement of this

Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or by-laws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Exercise of statutory powers between passing and commencement of Act.

37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or by-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Effect of repeal in future Acts.

38.—(1) Where this Act or any Act passed after the commencement of this Act repeals and

re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or,

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

Supplemental.

Definition of "Act" in this Act.

39. In this Act the expression "Act" shall include a local and personal Act and a private Act.

Saving for past Acts.

40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement.

Repeal.

41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule.

Commencement of Act.

42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety.

Short title.

43. This Act may be cited as the Interpretation Act, 1889.

SCHEDULE.

ENACTMENTS REPEALED. Section 41.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Geo. IV. c. 28.	An Act for further improving the administration of justice in criminal cases in England.	Section fourteen.
9 Geo. IV. c. 54.	An Act for improving the administration of justice in criminal cases in Ireland.	Section thirty-five.
7 Will. IV. & 1 Vict. c. 39.	An Act to interpret the word "sheriff," "sheriff clerk," "shire," "sheriffdom," and "county," occurring in Acts of Parliament relating to Scotland.	The whole Act.
13 & 14 Vict. c. 21.	An Act for shortening the language used in Acts of Parliament.	The whole Act.
29 & 30 Vict. c. 113.	The Poor Law Amendment Act of 1866.	Section eighteen, from the beginning to "can be appointed, and."
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879.	In section twenty the sub-sections numbered (3) and (6). Section fifty.
47 & 48 Vict. c. 43.	The Summary Jurisdiction Act, 1884.	Section seven.
51 & 52 Vict. c. 43.	The County Courts Act, 1888.	Section one hundred and eighty-seven from the beginning to "is meant, and."

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